

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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75-4249

IN THE
United States Court of Appeals
For the Second Circuit.

IN THE MATTER
OF
The Claim for Compensation under the Longshoremen's and Harbor
Workers' Compensation Act made by CARMELO BLUNDO,
Claimant-Respondent,
against
INTERNATIONAL TERMINAL OPERATING COMPANY, INC.,
Self-Insured Employer-Petitioner,
and
DIRECTOR, Office of Worker's Compensation Programs,
United States Department of Labor, *Respondent.*
ON REVIEW OF THE DECISION OF THE BENEFITS REVIEW BOARD
OF THE UNITED STATES DEPARTMENT OF LABOR.

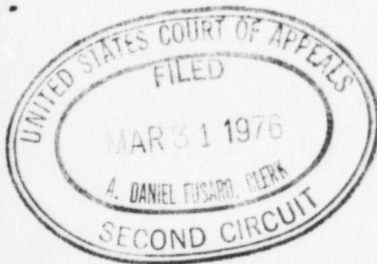
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APPENDIX.

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INDEX TO APPENDIX.

	Page
Index of Record Transmitted from Benefits	
Review Board	2a
Petition	6a
Decision and Order of Hon. Patrick G. Geraghty,	
Administrative Law Judge, Dated March 3,	
1975	8a
Order Amending Previously Issued Decision and	
Order from Administrative Law Judge	
Patrick G. Geraghty, Dated April 18, 1975 .	18a
Decision of Benefits Review Board and Order	
of the Administrative Law Judge, Dated	
October 30, 1975	20a
Transcript of Testimony	27a

TESTIMONY.

Page

[illegible]

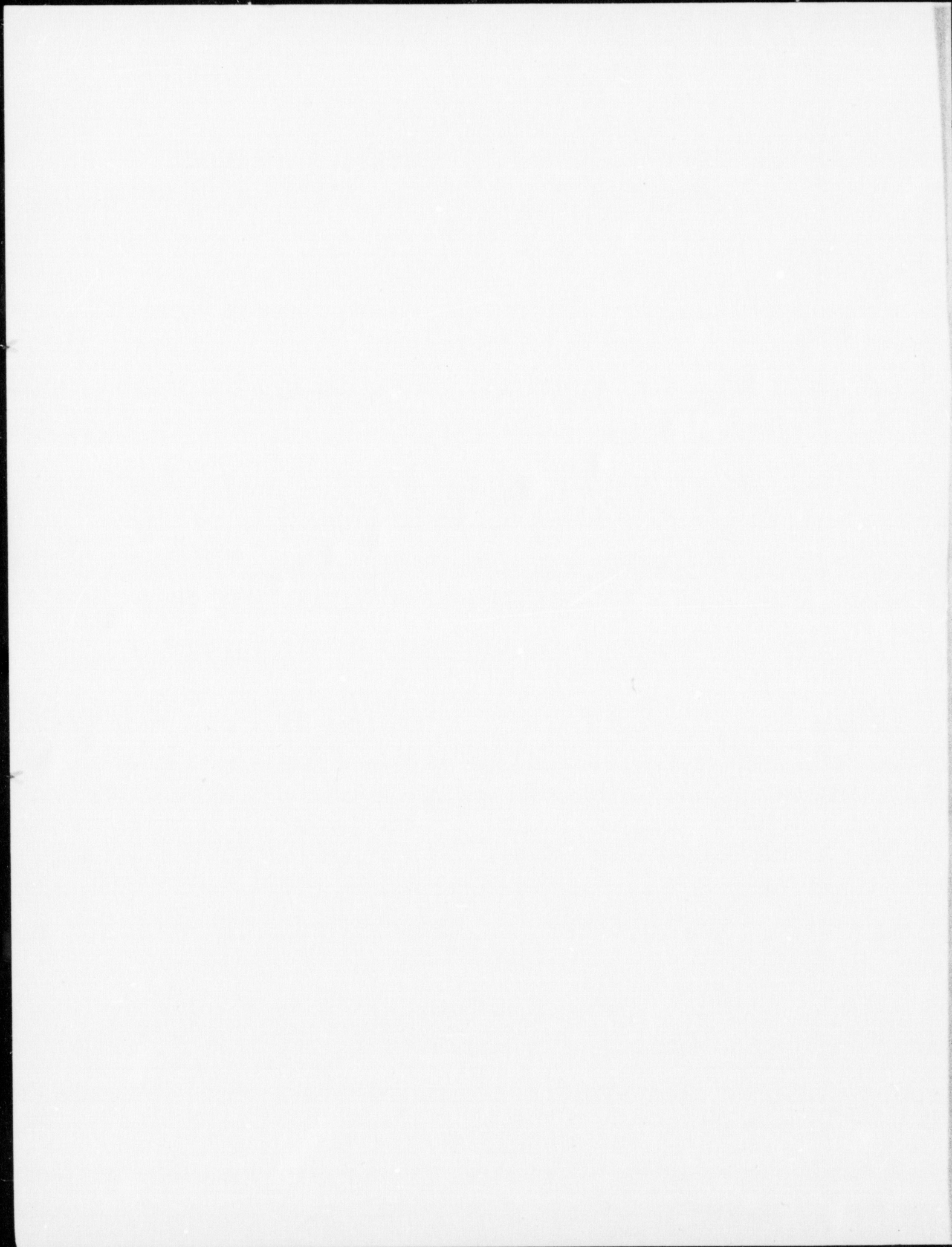
Direct 118a

Direct 74a
Cross 91a	
Redirect 115a	

iii.

EXHIBITS.

				Admitted Page
1 for Identification.	Memorandum	.	.	33a
2 for Identification.	Memorandum	.	.	33a



1a

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

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IN THE MATTER

of

The Claim for Compensation under the Longshoremen's
and Harbor Workers' Compensation Act made by
CARMELO BLUNDO,

Claimant-Respondent,

against

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.,

Self-Insured Employer-Petitioner,

and

DIRECTOR, OFFICE OF WORKER'S COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,

Respondent.

ON REVIEW OF THE DECISION OF THE BENEFITS REVIEW BOARD
OF THE UNITED STATES DEPARTMENT OF LABOR.

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INDEX OF RECORD TRANSMITTED FROM BENEFITS REVIEW BOARD.

	Page
Order of Board denying approval of the fee requested, dated November 26, 1975	1-2
Order of Board dismissing appeal, dated November 4, 1975 (BRB No. 75-142A)	3-4
Decision of Board affirming the Decision and Order of the administrative law judge, dated October 30, 1975	5-10
Order amending previously issued Decision and Order from Administrative Law Judge Patrick G. Geraghty, dated April 18, 1975	11-13
Decision and Order from Administrative Law Judge Patrick G. Geraghty, dated March 3, 1975	14-24
Letter from Angelo C. Gucciardo requesting fee, dated October 24, 1975	25-26
Letter from Leonard J. Linden in reply to brief of the Director, OWCP, dated June 18, 1975	27-28
Brief on Behalf of Director, OWCP from William J. Kilberg, dated June 13, 1975	29-37
Letter from Assistant Deputy Commissioner Anthony F. Campo enclosing documents, dated May 19, 1975	38
Notice of Appeal from Linden and Gallagher, dated May 7, 1975	39-40

INDEX OF RECORD TRANSMITTED FROM BENEFITS REVIEW BOARD

	Page
Copy of Notice of Appeal from Cornelius v. Gallagher, dated March 31, 1975	41-42
Letter to Assistant Deputy Commissioner Anthony F. Campo from A. P. Cerrachio, vice presi- dent, International Terminal Operating Co., Inc., advising and enclosing corrected Form BEC-208, dated May 7, 1975	43
Corrected Form BEC-208 from A. P. Cerrachio, vice president, Internation Terminal Operating Co., Inc.	44
Letter from Leonard J. Linden enclosing Petition for Review and Petitioner's Memorandum in Support of Petition for Review, dated May 14, 1975	45
Petition for Review from Leonard J. Linden	46-47
Petitioner's Memorandum in Support of Petition for Review from Leonard J. Linden	48-57
Letter to Cerrachio from Assistant Deputy Commissioner Anthony F. Campo requesting corrected Form BEC-208, dated May 6, 1975	58
Form BEC-208 from Assistant Deputy Commissioner Anthony F. Campo	59

INDEX OF RECORD TRANSMITTED FROM BENEFITS REVIEW BOARD

	Page
Board acknowledging receipt of Supplemental Notice of Appeal, dated May 13, 1975	60-61
Copy of Notice of Appeal from Linden and Gallagher, dated May 7, 1975	62-63
Board acknowledging receipt of Notice of Appeal for BRB 75-142, dated April 9, 1975	64-65
Board acknowledging receipt of Notice of Appeal for BRB 75-142A, dated April 9, 1975	66-67
Notice of Appeal from Leonard J. Linden, dated March 31, 1975	68-69
Notice of Appeal from Angelo C. Gucciardo, dated March 27, 1975	70-71
Letter from Assistant Deputy Commissioner Anthony F. Campo enclosing documents, dated April 3, 1975	72-73
Letter to Administrative Law Judge Patrick G. Geraghty in reply to memoranda submitted on behalf of claimant, dated January 22, 1975	74-77
Letter to Administrative Law Judge Patrick G. Geraghty from Angelo C. Gucciardo enclosing claimant's Brief and Statement of Facts and Fee Application, dated January 10, 1975	78

INDEX OF RECORD TRANSMITTED FROM BENEFITS REVIEW BOARD

	Page
Claimant's Brief, Statement of Facts from Angelo C. Gucciardo, dated January 10, 1975	79-85
Fee application from Angelo C. Gucciardo, dated January 10, 1975	86-89
Letter to Administrative Law Judge Patrick G. Geraghty from Leonard J. Linden submitted as a memorandum in support of defenses raised by the employer and carrier, dated January 9, 1975	90-95
Memorandum on Behalf of Director, OWCP from William J. Kilberg, dated January 9, 1975	96-103
Form BEC-208	104
Official Report of Proceedings before the Office of the Administrative Law Judges at New York, New York, December 11, 1974 (Transcript).	
Official Report of Proceedings before the Office of the Administrative Law Judges at New York, New York, December 11, 1974 (Exhibits).	

PETITION.

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT

75-4249

In The Matter of the Claim for Compensation
under the Longshoremen's and Harbor Workers'
Compensation Act made by

CARMELO BLUNDO,
Claimant-Appellee,

PETITION

-against-

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.
Self-Insured Employer-Appellant,

Before the Benefits Review Board of the
United States Department of Labor.

BRB No. 75-142

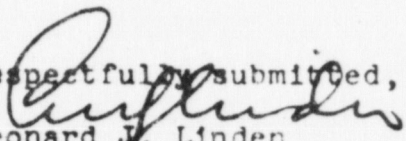
The undersigned by and ^{on} behalf of International Terminal Operating Company, Inc., Self-Insured Employer-Appellant, pursuant to 33 U.S.C.A. §921 (c) of the Longshoremen's and Harbor Workers' Compensation Act, hereby petitions this Court for review of a decision of the Benefits Review Board of the United States Department of Labor, filed October 30, 1975 wherein the Board affirmed the ruling of an Administrative Law Judge, of the United States Department of Labor, filed March 7, 1975 as amended by order filed April 22, 1975, which held that the claimant's injury occurred within the jurisdiction of the Act and based thereupon made appropriate awards to the claimant for compensation and to his attorney for attorney's fees against the employer, on the grounds that at the time of injury neither the employer, nor the employee or the place of injury came within the jurisdiction of the Act and that a ruling establishing jurisdiction of the Act

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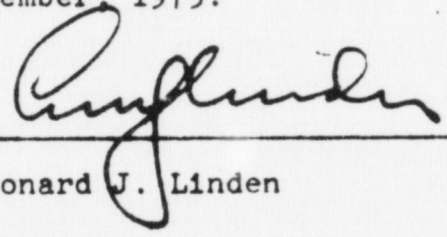
PETITION

In this claim is an unconstitutional construction of
the Longshoremen's and Harbor Workers Compensation Act.

Dated: November 18, 1975.

Respectfully submitted,

Leonard J. Linden
LINDEN & GALLAGHER
Attorneys for Appellant
20 Vesey Street
New York, N.Y. 10007

I hereby certify that I have mailed a copy of the foregoing
Petition for Review to William J. Kilberg, Solicitor of Labor,
Marshall Harris, Associate Solicitor, Ronald Meisburg,
Attorney, U.S. Department of Labor, 200 Constitution Avenue,
N.W. Suite N-2716, Washington, D.C. 20210, and to
Angelo C. Gucciardo, Esq., Israel, Adler, Ronca & Gucciardo,
Esqs., 160 Broadway, New York, N.Y. 10038, Attorneys for the
claimant, this 18th day of November, 1975.


Leonard J. Linden

WASHINGTON, D.C. 20210



Asu
3/6/75

Claimant

v.

Employer (Self-Insured):

: Case No. 75-LHCA-157
: (Formerly No. 2-31357

For the Claimant

For the Employer

Party in Interest

Decision and Order

This is a proceeding held pursuant to the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 et. seq. (hereinafter cited as the Act), on a claim for

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

compensation benefits filed by Carmelo Blundo (hereinafter referred to as Claimant) under the Act. The case is before this Administrative Law Judge for formal hearing and decision, as is provided by the Act and the Rules and Regulations implementing said Act, 20 C.F.R. §701 and 702.

After due notice to the Parties, a formal hearing was held, on this matter, on December 11, 1974, in New York City, New York. The Claimant was present and was represented by his Attorney, Angelo C. Gucciardo, Esquire. The Employer, who is Self-Insured, was represented by its Counsel, Leonard J. Linden, Esquire. Counsel were afforded full opportunity to present evidence, to call, examine and cross-examine witnesses.

Counsel from the Office of the Solicitor of Labor was not present at the formal hearing; however, the Solicitor has filed a Brief on behalf of the Director, Office of Workers' Compensation Programs, a Party-in-Interest, pursuant to 20 C.F.R. §702.333(b). Counsel for the other Parties have also submitted Briefs in support of their respective positions and Counsel for Employer has also submitted a memoranda in reply to the Briefs filed by the Claimant and the Solicitor. In addition, Counsel for Claimant has submitted a petition for allowance and in support of a reasonable attorney's fee. All these documents have been duly considered and they are hereby incorporated into this record.

Stipulations of the Parties

At the commencement of this formal hearing, Counsel for the Parties stipulated and agreed that there was no dispute as to the following matters:

1. The Claimant sustained his injury on January 8, 1974, while in the employ of the Employer and within the course of said employment.
2. There was timely notice, both of the injury and of this claim.
3. The Claimant, as a result of said injury was temporarily totally disabled from January 9, 1974, to February 1, 1974, for which period Employer has paid to Claimant \$285.00, as compensation benefits pursuant to the New York State Workmen's Compensation Statute, less two (2) days worked.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

4. The Claimant's average weekly wages, at time of injury, were \$257.69, for a compensation rate of \$171.79 per week.
5. The Claimant sustained an accidental injury to his head and lower back, while working as a checker at Employer's pier facility, located at 21st Street, Brooklyn, New York.

These stipulations and agreements are accepted and these matters are, therefore, considered established.

Issues

There are two questions presented for resolution: (1) Did the Claimant sustain his injury in an area within the jurisdiction of the Act; (2) Was the Claimant, at the time of injury, an "employee" within the meaning of the Act?

Decision

It is argued that the Claimant is not entitled to compensation benefits under the Act, as he did not sustain his injury in a place within the jurisdiction of the Act.

In the 1972 Amendments to the Act, Congress expanded the situs test 1/ by providing that:

Compensation shall be payable under the Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area

1/ Prior to the 1972 Amendments, situs requirements restricted coverage to injuries occurring on the navigable waters of the United States. 33 U.S.C. §903(a), 44 Stat. 1426 (1927); Travelers Ins. Co. v. Shea, 382 F.2d 344 (5th Cir. 1967), cert. denied, 389 U.S. 1050 (1967), reh. denied, 393 U.S. 903 (1968); Nacirema Operating Co. v. Johnson, 396 U.S. 212, 90 S. Ct. 347 (1969), reh. denied, 397 U.S. 929 (1970).

11a

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

customarily used by an employer in loading,
unloading, repairing or building a vessel.)
(Emphasis added). 2/

Thus, Congress has modified the original situs requirement, expanding the physical locus of the Act's jurisdiction to include injuries incurred on shoreside facilities.

The Claimant, on the date of his accident, was employed at Employer's facility, commonly known as 21st Street Pier, which is located in Brooklyn, New York. This enclosed facility encompasses an area 1,000 feet by 700 feet, between 19th and 21st Streets. As reflected in this record, there are apparently two (2) finger-piers at the facility, termed respectively: the 19th Street Pier and the 21st Street Pier. The pier at 21st Street can berth approximately five (5) ships, for purposes of loading or unloading. The 19th Street Pier, however, is not utilized by Employer for the actual loading or unloading of vessels; rather, it is used for storage of commodities and for stripping, or stuffing, i.e., loading or unloading, of containers. The Claimant sustained his injury at the 19th Street Pier, while checking cargo being stripped from a container, which, sometime previously, had been off-loaded from a vessel at another of Employer's facilities and brought to the 21st Pier facility for stripping. 3/

The legislative history of the Amendment specifically states the Congressional intent to expand coverage beyond the water's edge. 4/ The Amendment incorporates this intent, expressly extending coverage to include an adjoining pier, or other adjoining area customarily used by an employer for, inter alia, loading or unloading vessels. It has been held that,

2/ 33 U.S.C. §903(a), 86 Stat. 1251 (1972).

3/ The fact that this work was being done by Employer, under contract, for American Export Lines, does not affect the maritime nature of the work accomplished in this area.

4/ S. Rep. No. 92-1125, 92nd Cong., 2d Sess., 13, Legislative History of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, (1972), at 64; 75.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

"... until cargo is delivered to a trucker or other carrier who is to pick it up for further trans-shipment such cargo is in maritime commerce ..." 5/ Clearly the container which contains the cargo must, until stripped, also be deemed to be in maritime commerce. Moreover, a construction of the words loading or unloading a vessel, so as to restrict coverage only to those individuals actually engaged in such activity, is unduly restrictive and has been rejected. 6/ Such rationale is applicable here and is consistent with cases holding that stuffing or stripping of containers is an integral and essential step in the overall loading or unloading process. 7/ I conclude, therefore, that the area in which Claimant sustained his injury is included within the expanded situs requirements of the Act. Accordingly, I find that from the standpoint of situs, this claim comes within the provisions of the Act.

However, employees not engaged in maritime employment as defined by the Act, are not covered just because they sustain an injury in an area to which the Act's jurisdiction has been extended; 8/ therefore, if Claimant is to prevail, he must also meet the status tests now imposed by the Act: he must, at the time of injury have been an "employee", in the employment of an "employer", as those terms are defined by the Act. The Employer herein conceded that it is an "employer", as that term is defined by the Act; 9/ therefore, it is taken as established that the Employer is an "employer" within the meaning of the Act. 10/ The Act contains the following definition of the term, "employee":

5/ Avvento v. Hellenic Lines, Ltd., et. al., BRB No. 74-153 (November 12, 1974) at 4.

6/ Cf. Coppolino v. International Terminal Operating Co., Inc., BRB No. 74-136 (December 2, 1974) at 3; Adkins v. I.T.O. Corporation of Baltimore, BRB No. 74-123 (November 29, 1974).

7/ E.g. Powell v. Cargill, Inc., 74-LHCA-172 (October 8, 1974), Judge Miller; Stockman v. John T. Clark & Son of Boston, Inc., et. al., 74-LHCA-219 (November 25, 1974), Judge Oliver.

8/ Legislative History, supra, note 4 at 75.

9/ TR 80-81.

10/ 33 U.S.C. §902(4), 86 Stat. 1251 (1972).

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, ship-builder, and ship-breaker 11/

At the time he sustained his injury, the Claimant was performing his duties as a checker, on the 19th Street Pier, assisting in the stripping of a container and the segregation of its cargo into separate drafts. Although a precise date was not determined, it is clear that the container from which the cargo Claimant was checking was being stripped, was sometime previously off-loaded from a vessel at another of the Employer's facilities and subsequently transported by an independent trucking firm to the 19th Street Pier for stripping and further trans-shipment. The Claimant, while in the process of checking individual drafts formed from cargo stripped from this container slipped on some ice, fell and sustained the injury for which he seeks compensation in this proceeding.

The process of unloading a vessel cannot reasonably be held to have terminated at the point where the cargo and its container hits the pier. 12/ Adopting such view, the Benefits Review Board has held that cargo is deemed to be in maritime commerce until it has been delivered for further trans-shipment and that all employees engaged in its movement to that point are engaged in maritime employment. 13/ The fact that this particular container had been off-loaded from a vessel at another of Employer's facilities and thereafter trucked to the 19th Street Pier for stripping, i.e., unloading, does not adversely affect Claimant's status. The container was not being trucked for further trans-shipment; rather, it was merely being transported for purposes of unloading. Herein the container had to be stripped and the cargo separated into individual drafts for further trans-shipment; hence both the container and the cargo it contained, must be held to have been moving in the stream of maritime commerce. Until the contents had been

11/ 33 U.S.C. §902(3), 86 Stat. 1251 (1972).

12/ Cf. Di Somma v. John W. McGrath Corp., 74-LHCA-176, Judge Miller.

13/ Avvento, supra, note 5 at 4.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

stripped, the unloading process had not been completed. 14/ I conclude, therefore, that the stripping of this container and the checking of the drafts was an integral, essential and sequential part of the overall process of unloading cargo from a vessel. Moreover, the Claimant, while engaged in checking this cargo, was performing a function to which Congress expressly extended the coverage of the amended Act. 15/

Upon consideration of the record in its entirety and the applicable precedents, I hold that the Claimant at the time of his injury, was an "employee" of the Employer, as that term is defined by the Act. Accordingly, as the Claimant meets both the situs and the status requirements of the Act, he is entitled to receive compensation benefits pursuant to the Act.

The record indicates that the Claimant has received compensation benefits under the New York State Workmen's Compensation Statute. Acceptance of such benefits under a state act does not constitute an election which precludes recovery under the Federal Act. 16/ The Employer, however, is entitled to credit for the amounts paid thereunder against sums due pursuant to the Federal Act. 17/

Counsel for Claimant has filed an application seeking an award of attorney's fees in the sum of \$2,800.00. Upon consideration of the application, my observations during trial and the compensation results obtained, I find that an attorney's fee in the amount of \$1,200.00 would be a reasonable attorney's fee. 18/ An attorney's fee for said amount is approved and

14/ Cf. Crampton v. Cargill, Inc., 74-LHCA-215, Judge Smith; Stockman v. John T. Clark & Son of Boston, Inc., et. al., 74-LHCA-219, Judge Oliver.

15/ Legislative History, supra, note 4 at 75.

16/ Calbeck v. Travelers Ins. Co., 370 U.S. 114, 131, 82 S. Ct. 1196, 1206 (1962).

17/ Western Boat Bldg. Co. v. O'Leary, 198 F.2d 409, 411, 412 (9th Cir. 1952).

18/ Avvento, supra, note 5 at 5.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

assessed against the Employer. 19/ I hold that the disbursements which Counsel for Claimant seeks to recover are not recoverable costs within the meaning of the Act; therefore, their recovery and assessment against the Employer is denied. 20/

Findings of Fact and Conclusions of Law

Upon consideration of the record in its entirety, the Stipulations of Counsel, and from observation of the witnesses and their demeanor, I make the following specific Findings of Fact and Conclusions of Law:

1. The Claimant has made a claim for compensation benefits under the Act for injuries he sustained on January 8, 1974, while in the employ of the Employer.
2. The Claimant's injury arose out of and in the course of his employment.
3. The Employer is an "employer" within the meaning of the Act.
4. There was timely notice, both of the injury and of the claim.
5. The area in which Claimant sustained his injury is an area to which coverage has been extended by the Act.
6. At the time of injury, the Claimant was an "employee" of the Employer within the meaning of the Act; therefore, Claimant is entitled to receive applicable compensation benefits under the Act, as the Parties are subject to the Act.
7. The Claimant was, as a result of his injury, temporarily

19/ 33 U.S.C. §928(a).

20/ 33 U.S.C. §928(d); Fox v. Pacific Ship Repair, Inc. et. al., 75-LHCA-53, at 10-11; Spencer v. Stockton Stevedore & Warehouse, et. al., 75-LHCA-52, at 9-10.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

totally disabled from January 9, 1974, to February 1, 1974, for which period, less two (2) days worked he is entitled to the benefits provided by the Act. 33 U.S.C. §908(b).

8. The Claimant is entitled to have the Employer pay for, or reimburse him for the reasonable cost of such necessary medical treatment and care as the nature of his injury may, or may have required. 33 U.S.C. §907(a).

9. The Claimant's average weekly wages, at time of injury, were \$257.69, for a compensation rate of \$171.79 per week.

10. The Employer has paid to the Claimant, as compensation benefits pursuant to state compensation law the sum of \$285.00, and Employer is entitled to receive credit herein for such sum against amounts due under the Act.

11. The Claimant is entitled to have reasonable attorney's fees assessed against the Employer; however, other disbursements are not recoverable costs, assessable against the Employer.

Order

1. The Employer shall pay to the Claimant compensation for temporary total disability, at the rate of \$171.79 per week, for the period from January 9, 1974, to February 1, 1974, less two (2) days worked.

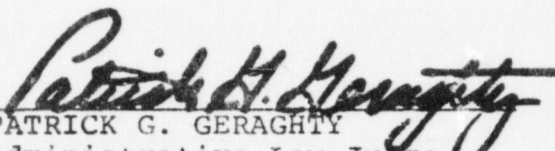
2. Interest on accrued payments due Claimant shall be paid at the rate of six (6) percent per annum, computed from the date each such payment was due, and the total amount of such payments, as are now due and owing, shall be paid forthwith, in a lump sum, to the Claimant. Humble Oil and Refining Co. v. Taliaferro, BRB No. 107-73 (June 1, 1973).

3. The Employer shall be allowed credit in the sum of \$285.00, against such amounts as are due hereunder, which sum is the amount previously paid to the Claimant pursuant to the compensation statute of the State of New York.

4. The Employer shall pay for, or reimburse the Claimant for the reasonable cost of such necessary medical care and treatment as the nature of Claimant's injury has or may require.

DECISION AND ORDER OF HON. PATRICK G. GERAGHTY,
ADMINISTRATIVE LAW JUDGE, DATED MARCH 3, 1975

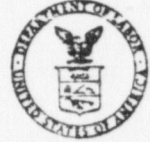
5. A legal fee in the amount of \$1,200.00, for legal services rendered to the Claimant is approved in favor of Angelo C. Gucciardo, Esq., which fee shall be paid directly to him by the Employer.


PATRICK G. GERAGHTY
Administrative Law Judge

Dated: March 3, 1975
Washington, D. C.

ORDER AMENDING PREVIOUSLY ISSUED DECISION AND ORDER FROM
ADMINISTRATIVE LAW JUDGE PATRICK G. GERAGHTY, DATED
APRIL 18, 1975.

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20210



.....
In the Matter of

CARMELO BLUNDO,

Claimant

v.

INTERNATIONAL TERMINAL OPERATING CO., INC.

Employer (Self-Insured)
.....

BRK
4/31/75
: Case No. 75-LHCA-157
: (Formerly No. 2-31357)

Order Amending Previously
Issued Decision and Order

On March 3, 1975, this Administrative Law Judge issued his Decision and Order in this proceeding, awarding compensation benefits to the Claimant. Therein, the Employer was ordered, inter alia, to pay to the Claimant compensation for temporary total disability, at the rate of \$171.79 per week, for the period from January 9, 1974 to February 1, 1974, less two (2) days worked.

Counsel for Claimant has filed a Motion to Modify the Decision and Order of March 3, 1975, on the grounds that the period of temporary total disability set forth in paragraph 1 of said Order is incorrect. Counsel points out that, although under the New York State compensation statute a claim was made and paid for temporary total disability from January 9, 1974 to February 1, 1974, the Parties herein stipulated and agreed that, for purposes of Claimant's claim pursuant to the Federal Act, Claimant's period of temporary total disability was January 9, 1974 to April 15, 1974, inclusive, less two (2) days worked (TR 6, 11, 9-18; Joint Exhs. 1, 2). Counsel for the Employer has not filed a Reply in opposition to this Motion for Modification.

WHEREFORE, as upon consideration of the foregoing promises it appears that the Decision and Order of March 3, 1975, should

ORDER AMENDING PREVIOUSLY ISSUED DECISION AND ORDER FROM
ADMINISTRATIVE LAW JUDGE PATRICK G. GERAGHTY, DATED
APRIL 18, 1975

be modified to conform to the stipulations and agreements of
the Parties, it is therefore,

ORDERED, that the Decision and Order of March 3, 1975,
be, and the same hereby is, modified as follows:


A. Paragraph 7, Findings of Fact and Conclusions of Law:

7. The Claimant was, as a result of his injury,
temporarily totally disabled from January 9,
1974, to April 15, 1974, for which period,
less two (2) days worked, he is entitled to
the benefits provided by the Act. 33 U.S.C.
§ 908(b).

B. Paragraph 1, ORDER:

1. The Employer shall pay to the Claimant compensation
for temporary total disability, at the rate of
\$171.79 per week, for the period from January 9,
1974, to April 15, 1974, inclusive, less two (2)
days worked.

and further, that in all other respects the Decision and Order
of March 3, 1975, is affirmed and adopted.


PATRICK G. GERAGHTY
Administrative Law Judge

Dated: April 18, 1975
Washington, D. C.

DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975.

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
WASHINGTON, D.C. 20210



CARMELO BLUNDO

Claimant-Respondent

v.

INTERNATIONAL TERMINAL OPERATING
COMPANY, INC.

Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party in Interest
NOV 3 1975

FILED AS PART
OF THE RECORD
OCT 30 1975

(date)

Carolyn D. McCready

(Clerk)

Benefits Review Board

BRB No. 75-142

DECISION

Appeal of Decision and Order of Patrick G. Geraghty,
Administrative Law Judge, United States Department of
Labor.

Leonard J. Linden (Linden and Gallagher), New York,
New York, for employer.

Angelo C. Gucciardo (Israel, Adler, Ronca and Gucciardo),
New York, New York, for claimant.

Ronald Meisburg (William J. Kilberg, Solicitor of Labor,
Laurie M. Streeter, Associate Solicitor), Washington, D.C.,
for Director, Office of Workers' Compensation Programs,
United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller,
Members.

REC

DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

Miller, Member:

This appeal by the employer seeks review and reversal of a Decision and Order (75-LHCA-157), and a subsequent Order by which the first was amended, of Administrative Law Judge Patrick G. Geraghty. The claimant was awarded compensation for temporary total disability, interest, medical expenses and attorney's fees. The employer was credited with amounts already paid to the claimant pursuant to the compensation statute of the state of New York. The claim was filed pursuant to provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 et seq. (hereafter referred to as the Act).

The claimant sustained injuries to his back and head on January 8, 1974, while working as a checker with a crew of men who were stripping a container at the 19th Street Pier, within the employer's terminal at Brooklyn, New York. The containers which were stripped at the time of injury had been off-loaded from a vessel some time previously, apparently by employees of another company, and brought to the I.T.O. Co. terminal by truck for stripping.

The administrative law judge found that the claimant's injury occurred within both the "status" and "situs" jurisdiction of the Act and awarded compensation accordingly. In this appeal, the employer contests these findings, contending that at the time of injury, neither the employer, the employee or the place of injury was within the jurisdiction

DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

of the Act and that finding this claim to be within the jurisdiction of the Act is unconstitutional.

The Board rejects the employer's arguments and agrees with the administrative law judge. This injury did occur under circumstances which are within the jurisdictional requirements of Sections 2(3), (4) and 3(a) of the Act. 33 U.S.C. §§902(3), (4), 903(a).

It is argued that the claimant was not engaged in maritime employment at the time of his injury, and so was not an "employee" within the meaning of Section 2(3), because the container being stripped had been brought to the employer's terminal by a trucking company over public streets and that once delivered to this trucking company, the container was being moved for trans-shipment and had left maritime jurisdiction. This Board has consistently held that stripping containers, which may have been off-loaded from a vessel some days earlier, is a longshoring operation, part of the over-all process of unloading a vessel, is maritime employment and a person engaged in this activity is an "employee" within the meaning of Section 2(3). Stockman v. John T. Clark & Son of Boston, Inc., 2 BRBS 99, BRB No. 74-231 (July 30, 1975). The fact that the claimant was a checker rather than a longshoreman actually engaged in removing cargo from a container does not remove him from the Act's coverage; the legislative history of the Act specifically indicates intent that checkers be covered. S. Rep. No. 92-1125, 92d Cong., 2d Sess. 13 (1972);

DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

H.R. Rep. No. 92-1441, 92d Cong., 2d Sess. 11 (1972). The fact that the container had been removed from a ship at one location and transported to another location for stripping does not take it out of maritime commerce. See Stockman, supra. Cargo remains in maritime commerce until it is delivered to a consignee for further trans-shipment and moving a container from one location to another for the purpose of stripping, removing its contents in preparation for delivery to consignees, is not itself "further trans-shipment" so as to take it out of maritime commerce.

The employer contends that it is not an "employer" within the meaning of Section 2(4) because it was not engaged in unloading a vessel at the 19th street pier at the time of the claimant's injury. Since the claimant and his co-workers were engaged in a longshoring operation, maritime employment, the employer is an "employer" as defined in Section 2(4). Harris v. Maritime Terminals, Inc., 1 BRBS 301, BRB No. 74-178 (Feb. 3, 1975).

The employer's argument that the place of injury, the 19th Street Pier, is not within the jurisdiction of the Act, is without merit. The claimant was injured within the confines of the employer's terminal, adjoining navigable waters. Such a terminal is within the "situs" jurisdiction of the Act. Lopez v. Atlantic Container Lines, Ltd., 2 BRBS 265, BRB No. 75-117 (Sept. 9, 1975). Since the claimant was injured within a terminal customarily used by an employer in loading

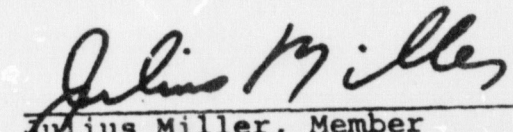
DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

or unloading vessels, even though at a neighboring pier rather than the specific pier where the claimant was working, the jurisdictional requirement of Section 3(a) is satisfied. See Harris v. Marine Terminals, Inc., supra.

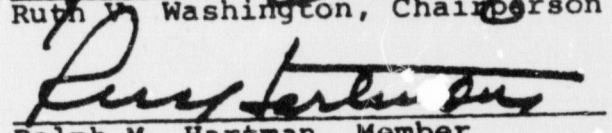
The employer's final argument, that finding this claimant to be covered requires an unconstitutional interpretation of the Act, must be rejected. The Board's views on this subject have been adequately discussed in a prior opinion. Coppolino v. I.T.O. Co., Inc., 1 BRBS 205, BRB No. 74-136 (Dec. 2, 1974).

The Decision and Order, as amended, of the administrative law judge, is affirmed in all respects.

We Concur:


Julius Miller, Member


Ruth W. Washington, Chairperson


Ralph M. Hartman, Member

Dated this 30th day
of October, 1975.

DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

SERVICE SHEET

BRB No. 75-142: CARMELO BLUNDO v. INTERNATIONAL TERMINAL
OPERATING COMPANY, INC. (75-LHCA-157)

Copies have been sent to the following parties:

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New York, New York 10038

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DECISION OF BENEFITS REVIEW BOARD AND ORDER OF THE
ADMINISTRATIVE LAW JUDGE, DATED OCTOBER 30, 1975

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
WASHINGTON, D.C. 20210



A decision by the Benefits Review Board becomes final after 60 days from the date such decision is issued unless a petition requesting review has been filed in the appropriate United States court of appeals. 33 U.S.C. §921(c).

TRANSCRIPT OF TESTIMONY.

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Labor
Rogers
12/11

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE ADMINISTRATIVE LAW JUDGES

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:
In the matter of the claim for :
compensation under the Longshoremen's :
and Harbor Workers' Compensation Act: :

CARMELO BLUNDO,

Claimant,

vs.

: Case No. 75-LHCA-157

INTERNATIONAL TERMINAL OPERATING
COMPANY, INC.,

: Formerly Case No.
: 2-31357

Employer,

and

Self-Insured,

Carrier.

----- x
NTSB Hearing Room, 36th Floor
26 Foley Plaza
New York, New York
Wednesday, December 11, 1974

The above-entitled matter came on for hearing before
the Honorable PATRICK G. GERAGHTY, Administrative Law Judge,
at 9:28 o'clock, a. m.

APPEARANCES:

On behalf of the Claimant:

ANGELO C. GUCCIARDO, ESQ.
Israel, Adler, Ronca & Gucciardo
160 Broadway
New York, New York 10038

APPEARANCES (Continued):

On behalf of the Employer:

LEONARD J. LINDEN, ESQ.
Linden & Gallagher
20 Vesey Street
New York, New York 10007

- - -

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>EXAMINATION</u>		<u>RECROSS</u>
		<u>CROSS</u>	<u>REDIRECT</u>	
Carmelo Blundo	8	26	37, 41, 46	40, 45
Albert W. Cash	48	65	89	

Page

Rebuttal by Mr. Gucciardo

92

EXHIBITS

<u>EXHIBITS</u>	<u>MARKED</u>	<u>RECEIVED</u>
No. 1 and No. 2	7	--

P R O C E E D I N G S

JUDGE GERAGHTY: The hearing will come to order, please.

This is a formal hearing de novo, in the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

It is the case of Carmelo Blundo -- is that the correct pronunciation, Mr. Gucciardo?

MR. GUCCIARDO: Yes, it is.

JUDGE GERAGHTY: Carmelo Blundo, B-l-u-n-d-o, Claimant, against International Terminal Operating Company, Inc., the Employer, and is he self-insured, Mr. Linden?

MR. LINDEN: Yes, sir.

JUDGE GERAGHTY: It is Case No. 75-LHCA-157, formerly Case No. 2-31357.

The parties are advised that this proceeding would be conducted in accordance with the provisions of the Act, the rules and regulations of the Department of Labor implementing the Act, and the appropriate sections of the Administrative Procedure Act.

I am Patrick G. Geraghty, the Administrative Law Judge designated by the Chief Administrative Law Judge, to preside at this proceeding.

Would counsel for the claimant please identify himself for the record?

1 MR. GUCCIARDO: Angelo C. Gucciardo, of the firm of
2 Israel, Adler, Ronca and Gucciardo, 160 Broadway, New York,
3 New York, 10038.

4 MR. LINDEN: Leonard J. Linden, Linden and Gallagher,
5 20 Vesey Street, New York, New York, 10007, for the self-
6 insured employer.

7 JUDGE GERAGHTY: Are counsel ready to proceed?

8 MR. GUCCIARDO: We are, Your Honor.

9 I would like to make a brief opening statement
10 relative to stipulations.

11 JUDGE GERAGHTY: May I get to the formality part
12 before you get to that?

13 The hearing is being held pursuant to notice issued
14 the fourth day of November, 1974, setting down this matter for
15 formal hearing at this time and place.

16 Counsel are advised that the decision in this matter
17 will be based on the record made herein today and that any
18 documents, papers or exhibits previously submitted to the
19 Deputy Commissioner are not a part of the record at this time
20 and that if counsel wish such papers to be made a part of the
21 record, they will have to be reoffered.

22 Now, Mr. Gucciardo, are there some stipulations?

23 MR. GUCCIARDO: Yes, Your Honor.

24 There are stipulations which are essentially con-
25 tained in the memorandum of conference held May 29th, 1974,

1 before John M. Gontaryk.

2 And as to all the essential facts contained in this
3 memorandum, both sides agree to stipulate thereto, except to
4 the question of jurisdiction, which is the sole question
5 presented to Your Honor for decision.

6 JUDGE GERAGHTY: Just to be sure, the average wage
7 is \$257.69.

8 MR. LINDEN: That is right, sir.

9 JUDGE GERAGHTY: That is down at the bottom of the
10 page.

11 MR. GUCCIARDO: I am looking on the memorandum I am
12 about to offer into evidence.

13 Your Honor, \$171.79 per week is the rate.

14 JUDGE GERAGHTY: Now, I have not had an opportunity
15 to see the document you are referring to, Mr. Gucciardo, and
16 I don't believe that it is possibly the same memorandum that
17 I have.

18 Would counsel come to the bench so that we are sure,
19 since this is going to be the basis of the stipulations.

20 Off the record.

21 (Discussion off the record.)

22 JUDGE GERAGHTY: On the record.

23 MR. GUCCIARDO: Your Honor, respondent and claimant
24 jointly offer for your consideration as part of the evidence,
25 the memorandum of conference dated May 20th, 1974, by John M.

1 Gontaryk, as well as the referral of claim to formal hearing
2 also signed by John M. Gontaryk, Claims Examiner, for the
3 U. S. Department of Labor.

4 Both exhibits are to be considered as a joint exhib-
5 it by claimant and respondent, the sole issue to be tried, as
6 I said before, is jurisdiction.

7 JUDGE GERAGHTY: Mr. Linden, is that agreeable with
8 you?

9 MR. LINDEN: That is correct.

10 Of course neither of us stipulate that the conclu-
11 sions arrived at as to the jurisdiction set forth in the
12 memorandum that has just been submitted are to be conceded by
13 either side and further that the only claim is for the period
14 of disability as indicated in the memorandum which is January
15 9, 1974, through April 15, 1974, inclusive, less two days'
16 work.

17 In all respects, I believe that the memorandum is
18 correct.

19 JUDGE GERAGHTY: The memorandums will be accepted as
20 Joint Exhibits, limited to the facts and not the conclusions
21 of the Hearing Examiner or Claims Examiner, whatever his title
22 is, and the first typewritten document will be marked as
23 Joint Exhibit 1.

24 The two-page exhibit will be marked as Joint Exhibit
25 2 for purposes of identification.

(Whereupon, the documents above referred to were marked as Joint Exhibit No. 1 and Joint Exhibit No. 2 for identification.)

JUDGE GERAGHTY: While we are on exhibits, are there any other exhibits that either side wishes to offer?

Maybe we could dispose of all the exhibits at this point.

Do you have any, Mr. Linden?

MR. LINDEN: No, sir.

MR. GUCCIARDO: No, Your Honor.

JUDGE GERAGHTY: Are there any opening statements that either side wishes to make with respect to the issue and which I take it is jurisdictional?

MR. GUCCIARDO: I will waive opening statement, Your Honor, and reserve my statement for the closing statement.

MR. LINDEN: I would rather make closing statements.

JUDGE GERAGHTY: Do you have any witnesses, Mr. Gucciardo?

MR. GUCCIARDO: Yes.

I have the claimant.

JUDGE GERAGHTY: Would you call him?

MR. GUCCIARDO: Mr. Carmelo Blundo.

Whereupon,

CARMELO BLUNDO

1 was called as a witness, and after having been first duly
2 sworn by the Administrative Law Judge, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GUCCIARDO:

6 Q Mr. Blundo, would you please give your name and
7 address for the record?

8 A Carmelo Blundo, 839 49th Street, Brooklyn.

9 Q Mr. Blundo, what is your occupation?

10 A Checker.

11 Q How long have you been checker?

12 A Five years.

13 Q Do you regularly work as a checker for a particular
14 employer?

15 A Yes, sir.

16 Q What employer?

17 A ITO.

18 Q Will you tell us for the record where you perform
19 your duties as a checker?

20 A 21st Street. Mostly on 21st Street.

21 Q Where is 23rd Street located?

22 A Excuse me?

23 JUDGE GERAGHTY: Excuse me.

24 The witness is saying 21st Street and you are saying
25 23rd Street.

1 THE WITNESS: 21st.

2 MR. GUCCIARDO: I stand corrected, I am sorry.

3 THE WITNESS: I work on 21st Street, which occupies
4 21st Street up to 19th Street.

5 BY MR. GUCCIARDO:

6 Q Is there a gate maintained in order to go into this
7 pier area?

8 A Yes, there is two gates, one on 20th Street and one
9 on 19th Street.

10 JUDGE GERAUGHTY: Mr. Gucciardo, I don't want to
11 interrupt, I know you are totally familiar with the area, and
12 I am little bit because of prior hearings, but the man has
13 only stated that he works on 21st Street, which anybody read-
14 ing the record would take as just a block in the middle of the
15 city, maybe, and I am sure you mean it as a pier.

16 MR. LINDEN: And I think he also said 19th to 21st
17 Street, which is correct.

18 MR. GUCCIARDO: I am going to get to that, Your
19 Honor, the gate and enclosure and so forth.

20 BY MR. GUCCIARDO:

21 Q Is there a gate maintained to these premises known
22 as 21st Street?

23 A Yes, there is.

24 Q There is a fence around the area, too?

25 A There is.

1 Q What is this, actually, 21st Street. You said you
2 work at 21st Street, but what kind of facility?

3 A It is a pier.

4 Q Is it adjacent to navigable waters of the United
5 States?

6 A Yes, it is.

7 Q From the entrance or the gate to the water's edge,
8 how many feet would you say that is?

9 A Well, coming in from 21st Street, I would say it is
10 about a block and a half, two blocks.

11 Q Could we have an idea what type of a block you are
12 talking about?

13 A A long block.

14 Q But feetwise, could you tell us? One hundred feet?
15 Two hundred feet?

16 A I estimate a block to be approximately about five
17 hundred feet.

18 I would say it is about seven hundred, eight hundred
19 feet.

20 Q So, in other words, from the main gate to the water's
21 edge is about seven hundred feet?

22 A Right.

23 Q How wide is it or how long running along the
24 waterfront?

25 A It extends from 21st Street over to 19th Street.

1 Q How many feet is that as best you can give us?

2 A I would say approximately about another thousand
3 feet.

4 Q So the whole area would measure one thousand feet
5 by seven hundred feet?

6 A I would say that.

7 Q Is this entire area one thousand by seven hundred
8 feet approximately enclosed?

9 A It is enclosed.

10 Q It has two gates that you previously testified to?

11 A Right.

12 MR. LINDEN: We so concede.

13 MR. GUCCIARDO: I know.

14 That is why I am leading him, Mr. Linden, to save
15 some time.

16 BY MR. GUCCIARDO:

17 Q Is there a guard maintained at these gates?

18 A At both of them.

19 Q Who are the guards?

20 A They are McRobert guards.

21 Q Who engages the McRobert guards as far as you know?

22 A ITO.

23 Q You mean the International Terminal Operating
24 Company, Inc.?

25 A Right.

1 Q Do you work for the International Terminal Operating
2 Company, Inc.?

3 A Yes.

4 Q What is the business of the International Terminal
5 Operating Company, Inc.?

6 A To receive --

7 MR. LINDEN: I object, unless he shows foundation
8 to show that he knows.

9 JUDGE GERAGHTY: Ask the foundation.

10 BY MR. GUCCIARDO:

11 Q How long have you worked for -- I will abbreviate it
12 for the record, ITO?

13 A Five years.

14 Q In what capacity have you worked?

15 A As a checker.

16 Q Do you know what business they are in?

17 A Yes, I do.

18 Q What is their business?

19 A For discharging and loading cargo.

20 Q On where?

21 A Onto ships.

22 Q How many ships can be accommodated at this facility
23 at 21st Street, pier of 21st Street?

24 A Approximately five.

25 Q Five ships?

1 By the way, this is in Brooklyn?

2 A Yes, sir.

3 Q Does ITO engage a longshoreman to work both on the
4 vessels and on the dock?

5 A Yes.

6 Q Is the sole business conducted at this facility,
7 pier 21st Street, Brooklyn, the loading and unloading of
8 vessels?

9 MR. LINDEN: I object to that as leading. Nor is
10 there any foundation that he knows it.

11 JUDGE GERAGHTY: That is true, Mr. Gucciardo.

12 MR. GUCCIARDO: All right.

13 BY MR. GUCCIARDO:

14 Q You said you worked for ITO for approximately five
15 years.

16 Where have you done this work?

17 A Mostly on 21st Street.

18 Q Do you know what business they are engaged in at
19 21st Street?

20 A Yes, I do.

21 Q What is the business that they are engaged in?

22 A They are in the business of loading and -- of
23 delivering and receiving of cargo.

24 Q In conjunction with what?

25 A With loading and discharging vessels.

1 Q Are they engaged in any other business as far as you
2 know, at that particular facility, pier 21st Street, Brooklyn,
3 New York?

4 A Yes.

5 They were engaged in stripping containers for
6 American Export Lines.

7 Q For the record, what does stripping containers
8 mean?

9 A That means unloading containers that come off a
10 ship.

11 JUDGE GERAGHTY: Just to be clear on it, you did say
12 were engaged?

13 THE WITNESS: Yes.

14 The facility has moved to a different pier.

15 JUDGE GERAGHTY: I want to be sure that you said in
16 the past tense, thank you.

17 BY MR. GUCCIARDO:

18 Q Now, do you know exactly what you are going to do
19 every day before you do it?

20 A No, I don't.

21 Q Will you describe for us how the work is assigned
22 and where it is assigned?

23 A Well, the dock boss assigns us in the morning.
24 Either he assigns us to delivering freight or
25 receiving freight -- rather delivering cargo or receiving

1 cargo from, for loading or discharging of ships.

2 Q Do you have occasion to go on the ships in your
3 capacity as a checker?

4 A Yes, I do.

5 Q What percentage of your time is engaged in checking
6 on board vessels as opposed to working on the dock?

7 MR. LINDEN: I object.

8 The issue here is what was he doing at the time that
9 he was injured.

10 MR. GUCCIARDO: Your Honor, it is my contention that
11 the activities generally of this claimant and what he is
12 expected to be engaged in is important and not the particular
13 assignment that he may have had on a particular day.

14 JUDGE GERAGHTY: There is a recent decision down
15 from the Benefits Review Board which you gentlemen may not have
16 heard of yet.

17 I believe it is Coppollino, I am not sure how the
18 name is pronounced, which involved paper into an IBM machine.

19 Are you gentlemen familiar with that?

20 MR. GUCCIARDO: I am familiar with that, but not the
21 decision, Your Honor.

22 JUDGE GERAGHTY: The Board has held that that was a
23 covered maritime, without getting into the merits of the logic
24 of the Benefits Review Board.

25 Nonetheless, in light of that decision, I feel that

1 the record should be allowed to be made, although I indicate
2 my reluctance to do so.

3 I am aware of the decisions in other courts in which
4 they have said, Mr. Linden, it is the duties at the time of
5 the injury, not what he did two weeks ago.

6 MR. LINDEN: Even in Coppollino, what they did was
7 examine what he was doing at the time he was injured.

8 This question is not devoted to that.

9 JUDGE GERAGHTY: I think it is more in the nature
10 of a foundation question, am I correct, Mr. Gucciardo?

11 MR. GUCCIARDO: It is a little bit more than that,
12 Your Honor.

13 It is my contention that all of the activities that
14 this man is expected to be engaged in should be weighed in
15 evaluating whether or not this man is engaged in longshore
16 activity and not a particular activity at a particular time.

17 I realize that some of the Administrative Law Judges
18 do not go along with that thinking.

19 However, I should be permitted to develop the
20 record for purposes of appeal if an appeal should be warranted
21 pending on your decision.

22 JUDGE GERAGHTY: I don't agree with your reasoning,
23 Mr. Gucciardo.

24 However, I would allow you to make proffer for the
25 record and take the answer to your question with the understanding

1 that I am doing it solely as a proffer and sustain Mr. Linden's
2 objection, if that is the purpose of your question.

3 MR. GUCCIARDO: Then, will you permit him to answer
4 the question?

5 JUDGE GERAGHTY: Yes, sir, I certainly would.
6 Would you answer the question or we will read it
7 back.

8 THE WITNESS: Well, whenever I am assigned to a ship,
9 I spend approximately eight hours a day.

10 As a matter of fact, I do spend eight hours a day
11 checking.

12 BY MR. GUCCIARDO:

13 Q My question was, Mr. Blundo: In the course of a
14 year's time, while working for ITO as a checker, what per-
15 centage of your time will be spent on board a vessel as opposed
16 to working on the dock?

17 A It varies.

18 It varies to whenever he assigns me to a ship as a
19 ship's checker.

20 Q But you have past experience of working on the ship
21 as a checker?

22 A Yes.

23 Q Could you give us a percentage of the time?

24 A I would say approximately 20 percent of the time.

25 Q That you work where?

1 A On the ship.

2 Q Thank you.

3 Now, during the course of the day, are you assigned
4 to one particular task, or do you finish a task and then are
5 reassigned and reassigned as the case may be?

6 A No.

7 When I am assigned to a ship, I stay with that there
8 until the loading and discharging of cargo is finished.

9 Q All right.

10 Let us now go to when you are assigned on the --
11 to work on the pier.

12 Do you work at a particular task or particular van
13 all day long, or are you shifted?

14 A I am shifted around.

15 Q When you say you are shifted, on the day in ques-
16 tion, you were injured discharging a container or a van?

17 A Right.

18 Q For the record, is a van and container considered
19 the same thing?

20 A Yes, it is.

21 Q Now, assuming that you had not had the accident and
22 you finished discharging that van, what other types of work
23 would you be expected to do?

24 MR. LINDEN: I object.

25 He has not indicated a different type of work.

1 He may be assigned to a different container.

2 MR. GUCCIARDO: I agree with your exception and
3 withdraw it.

4 BY MR. GUCCIARDO:

5 Q What else would you be expected to do when you
6 finished the van, assuming that you reported to the hatch
7 boss --

8 JUDGE GERAGHTY: Mr. Gucciardo, are you still in
9 your proffer now because I would like to get to the day in
10 question.

11 MR. GUCCIARDO: One more question now, Your Honor.

12 THE WITNESS: When we finish unloading the contain-
13 er, we go on to another container.

14 If not, he will assign us to another task.

15 MR. GUCCIARDO: All right.

16 JUDGE GERAGHTY: Does that finish your proffer of
17 general activities, Mr. Gucciardo?

18 MR. GUCCIARDO: Yes, Your Honor.

19 BY MR. GUCCIARDO:

20 Q You were injured on January 8th, 1974, is that
21 correct?

22 A Yes, sir.

23 Q Will you tell us physically where you were located
24 at the time of your injury?

25 A I was located on the 19th Street side of the pier.

1 Q How far from the water's edge were you working at
2 the time?

3 A Approximately thirty feet, forty feet.

4 Q What were you doing?

5 A We were unloading a container?

6 Q What was to be done with the goods that had been
7 unloaded from this container?

8 A It was to be put in a bonded warehouse on the pier.

9 Q Then, what was to be done with these goods?

10 A Then, as these here cargo were assigned to a
11 consignee, and they would come down to pick it up from Customs,
12 it had to be released and they would have to be paid from
13 Customs.

14 Q When you say Customs, what do you mean by Customs?

15 A U. S. Customs.

16 Q Are these men employed by the U. S. government?

17 A Yes, sir.

18 Q Do they have to do with checking the cargo that is
19 received from overseas or from any --

20 A Well, checking and also receiving duty on it and
21 payment for the cargo received.

22 Q Is there a particular type of facility that this
23 type of cargo has to be put in before it is delivered to the
24 consignee?

25 A Yes.

1 It has to be put in a bonded warehouse.

2 Q Do you know where this container came from that you
3 were discharging?

4 A It came from either Holland Hook or our facility out
5 in Jersey.

6 MR. LINDEN: I didn't hear the last part.

7 THE WITNESS: A facility out in Jersey.

8 One of the piers out in Jersey.

9 MR. LINDEN: I object to the question on the grounds
10 that he does not know where it came from.

11 He is stating where it may have come from.

12 JUDGE GERAGHTY: It does not appear that he really
13 knows of his own knowledge, Mr. Gucciardo.

14 I would sustain that.

15 BY MR. GUCCIARDO:

16 Q Regardless of where it came from, do you know the
17 stevedoring company that unloaded it?

18 A Right.

19 Q What is it?

20 MR. LINDEN: May I object to that unless he asks
21 unloaded from where?

22 MR. GUCCIARDO: All right.

23 MR. LINDEN: Is he unloading the container or taking
24 the container off a ship?

25 JUDGE GERAGHTY: I think if you will address that

1 question specifically.

2 MR. GUCCIARDO: I understand what he is driving at.

3 I will withdrew it.

4 BY MR. GUCCIARDO:

5 Q Do you, of your own knowledge, know whether this
6 particular container that you were working on had been unloaded
7 ed from a vessel?

8 A Yes.

9 Q Did you have papers in your possession identifying
10 it to a vessel?

11 A Yes, sir, I did.

12 Q Do you know who, what stevedoring company rather,
13 had unloaded it from the vessel?

14 A No.

15 That I don't know, but when it comes down to the
16 pier, it is in the hands of ITO.

17 Q Does ITO have operations in Staten Island and New
18 Jersey, as far as you know?

19 MR. LINDEN: I object.

20 Immaterial to the issues in this case.

21 JUDGE GERAGHTY: What is the relevancy?

22 MR. GUCCIARDO: I am trying to tie up the fact that
23 ITO unloaded this cargo wherever it had been unloaded. His
24 own employer.

25 JUDGE GERAGHTY: I think he has already said it was

1 in the hands of ITO but beyond that he doesn't know, of his
2 own knowledge, based on the prior question, as to where the
3 cargo came from, so I don't see how he could possibly answer
4 that, Mr. Gucciardo.

5 BY MR. GUCCIARDO:

6 Q Do you know why the cargo was brought to 21st Street
7 pier for the purposes of stripping it from the container?

8 A It is to be put in a bonded warehouse.

9 Q Couldn't that be done wherever it was unloaded from
10 the vessel?

11 A I guess they didn't have the bonded warehouse on the
12 facility.

13 MR. LINDEN: I object and ask that it be stricken.
14 He wasn't asked to guess.

15 BY MR. GUCCIARDO:

16 Q Do you know why, rather than guess?
17 Don't use the word "guess."

18 A They didn't have U. S. Customs facility on there
19 to store this cargo.

20 Q Does all the cargo have to be put in a bonded ware-
21 house before it is delivered to the consignee?

22 A To my knowledge, only container cargo has to be put
23 into bonded warehouses.

24 Q Do you know why that has to be done?

25 A Because --

1 JUDGE GERAGHTY: Excuse me, Mr. Blundo.

2 We have gone through that two or three times with
3 the bonded cargo and consignee and U. S. Customs.

4 I don't think that we have to do it again unless
5 you really feel that you need that for your record.

6 MR. GUCCIARDO: No, we'll pass over that.

7 BY MR. GUCCIARDO:

8 Q Now, after it is, the container is stripped, and it
9 is put into the bonded warehouse, what occurs, what happens to
10 that cargo?

11 A The consignee comes down to pick it up and pay duty
12 on it.

13 Q And after the duty is paid, what happens?

14 A Then it is loaded on a truck and taken off the pier.

15 Q Who does the loading onto the truck?

16 A Longshoremen.

17 Q Who do the longshoremen work for?

18 A ITO.

19 Q Where is the truck physically located in relation to
20 the pier that you described?

21 A Right on the pier.

22 Q Does he have to go through the gate that is main-
23 tained by the McRobert guards that you testified to before?

24 A Right, yes.

25 Q Now, is this the usual procedure that is followed in

1 unloading the bonded merchandise or bonded cargo from a
2 vessel?

3 A Right.

4 MR. LINDEN: I object to that.

5 He hasn't indicated that he knows what the usual
6 procedure is.

7 All he is doing is unloading a container.

8 JUDGE GERAGHTY: I think you could get the same
9 answer by just turning the question around.

10 MR. GUCCIARDO: I will.

11 BY MR. GUCCIARDO:

12 Q Mr. Blundo, you said you were a checker?

13 A Yes, sir.

14 Q Do you, of your own knowledge, know what the
15 procedure is in releasing bonded cargo to consignee?

16 A Yes, I do.

17 Q What is the usual procedure?

18 A Well --

19 JUDGE GERAGHTY: Well, without going through it in
20 detail, is the usual procedure what you have already describ-
21 ed, Mr. Blundo?

22 THE WITNESS: Somewhat like.

23 JUDGE GERAGHTY: What do you mean, somewhat like?

24 THE WITNESS: Well, before I can release cargo to a
25 truckdriver, it has to be released to -- by Customs, themselves.

1 JUDGE GERAGHTY: So you need the release from
2 Customs before it can be released to the consignee?

3 THE WITNESS: Right, to be cleared through Customs.

4 JUDGE GERAGHTY: I think we have gone through it two
5 or three times.

6 MR. GUCCIARDO: I am going to get to the accident
7 now.

8 BY MR. GUCCIARDO:

9 Q Will you tell us briefly how the accident occurred?

10 A Well, the cargo was coming off the container and I
11 was going around to mark the draft.

12 There was ice on the ground and I slipped on the ice,
13 hit my back and my head on the ground.

14 Q You used the word "draft," and what does that mean,
15 please?

16 A The draft is a pallet containing the cargo.

17 Q Does the cargo on the pallet have markings on it?

18 A Yes, it has, and I go to give it a marking that they
19 give me to put on it, with crayons.

20 According to my manifest sheet.

21 MR. GUCCIARDO: I have nothing further.

22 JUDGE GERAGHTY: Mr. Linden?

23 CROSS-EXAMINATION

24 BY MR. LINDEN:

25 Q I believe you came to the area where you were working

1 that is enclosed in this fence, it is approximately seven
2 hundred feet from the water and extends about one thousand
3 feet along the water?

4 A Right.

5 Q When the ships come in, when the ships come into
6 this area, it comes in and is berthed parallel to the land, is
7 that correct?

8 A To the pier.

9 Q Well, the pier is parallel to the land, isn't it?

10 A Well --

11 MR. GUCCIARDO: I am going to object to the question
12 unless we get the type of pier, whether it is a finger pier
13 or bulkhead pier.

14 JUDGE GERAGHTY: Be a little more specific, Mr.
15 Linden.

16 MR. LINDEN: Well, I think when he answers the
17 question, we will find out whether it sticks out in the water
18 or is out by the land.

19 JUDGE GERAGHTY: Do you understand the question, Mr.
20 Blundo?

21 THE WITNESS: Yes, it is a finger pier.

22 BY MR. LINDEN:

23 Q It sticks out into the water?

24 A Right.

25 Q Were you working on the portion that was over the

1 water or the portion that was over the land?

2 A Over the portion over the water.

3 Q You state that the area is one thousand feet along
4 the water and that the ships pull in parallel to the land, is
5 that right?

6 MR. GUCCIARDO: Objection, Your Honor.

7 He did not state that they pull in parallel to the
8 land.

9 JUDGE GERAGHTY: This is cross-examination, Mr.
10 Gucciardo.

11 I am going to let Mr. Linden -- he indicated that
12 the ships pulled in there and I think this is a reasonable
13 construction of the prior testimony.

14 If the witness agrees or disagrees he can state
15 whether or not he does.

16 BY MR. LINDEN:

17 Q The ships pull in parallel to the land, you told
18 us, didn't you?

19 A That is before you explained to me about a finger
20 pier.

21 Q I didn't explain anything to you.

22 I merely asked you a question.

23 A Well, it is parallel to the pier.

24 Q It is not parallel to the land?

25 A No.

1 Q The nose of the ship is pointed toward the land, is
2 that what you are telling us?

3 A Right.

4 Q Now, you say that you are familiar with the business
5 of ITO at this location?

6 A Yes.

7 Q You told us, according to an answer of Mr.
8 Gucciardo, that they were loading and unloading ships?

9 A Right.

10 Q Now, you also made mention of the fact that they
11 were engaged, were your words, in stripping containers for
12 American Export Lines?

13 A Yes, sir.

14 Q At the time of your injury, that is exactly what
15 they were engaged in, is that true?

16 A Right.

17 Q You were engaged in checking cargo that was being
18 taken from a container for American Export Lines, is that
19 right?

20 A Right.

21 Q Now, that container was not unloaded from the ship
22 that had berthed in this area, was it?

23 A No.

24 Q How did that container get to ITO's area, we will
25 call it ITO's area, meaning the seven hundred by one thousand

1 foot area.

2 How did it get over there?

3 A It was brought over by Murphy truckdriver.

4 Q Who?

5 A Murphy Trucking.

6 Q What is Murphy Trucking; is it a public carrier?

7 A I guess so.

8 Q The truckdriver is ILA members or members of the
9 Teamsters Union?

10 A Teamsters.

11 Q Truckdrivers are not in the employ of ITO, are they?

12 A No, they are not.

13 Q Do you know who pays the trucking concern to bring
14 these containers over to this area?

15 MR. GUCCIARDO: Objection, Your Honor.

16 It is immaterial to the issues.

17 As long as they are not employed by ITO, what dif-
18 ference does it make who pays them?

19 JUDGE GERAGHTY: I will let him, as long as it is
20 cross.

21 Who pays them?

22 BY MR. LINDEN:

23 Q Do you know who pays these men?

24 A I suppose if John Murphy hires them, John Murphy
25 pays them.

1 Q Do you know who pays Murphy for transporting the
2 containers?

3 A I guess -- whoever picks up the --

4 MR. GUCCIARDO: Your Honor --

5 JUDGE GERAGHTY: It is apparent that the witness
6 does not know.

7 He is suggesting, Mr. Linden.

8 MR. LINDEN: Well, Judge Geraghty, this is, of
9 course -- also goes to the weight of the allegation that he
10 knows the business.

11 JUDGE GERAGHTY: The business that he was talking
12 about was the longshoring activities, not the business outside
13 the gate or how cargo, who pays for it there.

14 I drew the distinction.

15 MR. LINDEN: Is that conceded so then I can depart
16 from this particular area of cross-examination?

17 This witness is not familiar with Murphy Trucking
18 or anything to do with the container moving into this area.

19 JUDGE GERAGHTY: I can't concede anything.

20 MR. LINDEN: I am asking if Mr. Gucciardo will
21 concede that.

22 MR. GUCCIARDO: I am not conceding anything.

23 Just that this man does not know anything about the
24 Murphy Trucking.

25 BY MR. LINDEN:

1 Q You are not familiar with the contractual relationships
2 between ITO, American Export Lines or the trucking company as
3 to who is obligated to do what as far as getting containers
4 to this area, are you?

5 A One thing I do know is that the containers come off
6 the ship --

7 Q I know you are quite interested in establishing that,
8 but I would like you to please answer my question, if you will.

9 MR. GUCCIARDO: Object to counsel arguing with the
10 witness, Your Honor.

11 JUDGE GERAGHTY: You are arguing, Mr. Linden.

12 But the counsel is correct in that you are not
13 answering the question as posed.

14 When you are asked the question, Mr. Blundo, answer
15 the question as put to you.

16 If you don't know the answer, then say that you
17 don't know it.

18 Do you understand what I am telling you?

19 THE WITNESS: Yes, sir.

20 JUDGE GERAGHTY: Now, let me hear what you want to
21 say.

22 THE WITNESS: As far as the operations on the pier,
23 I am well familiar with them.

24 JUDGE GERAGHTY: Fine.

25 Now, if he asks you a question about that, then you

1 try and answer the question that Mr. Linden asks you and the
2 answer you were giving was really not responsive.

3 You have to respond to that question, not what you
4 want to say.

5 Reask the question, Mr. Linden, and if you don't
6 know the answer, you just say that you don't know.

7 THE WITNESS: Can I point out one fact?

8 I see the containers and -- now as far as Murphy
9 is concerned, we are only interested in what comes in on them
10 and we do the work for ITO as stripping containers.

11 JUDGE GERAGHTY: Okay.

12 Thank you, Mr. Blundo.

13 BY MR. LINDEN:

14 Q The answer to my question is: You are not familiar
15 with the contractual relationships whereby ITO does work for
16 American Export Lines or Murphy does work for whoever, and
17 brings the containers into this area, are you?

18 JUDGE GERAGHTY: Mr. Blundo, do you know what
19 contractual relationships means?

20 THE WITNESS: No, I don't.

21 JUDGE GERAGHTY: What he is asking you is: Do you
22 know what kind of agreement, paper, contract, is signed
23 between ITO and anybody else?

24 THE WITNESS: No, that I don't.

25 It is none of my business.

1 JUDGE GERAGHTY: Is that enough?

2 MR. LINDEN: Yes, it is.

3 Thank you.

4 BY MR. LINDEN:

5 Q Now, you also indicated originally, generally, that
6 ITO is engaged in the business of unloading and loading ships,
7 is that what you told us?

8 A Yes.

9 Q The work that you were doing was not the loading or
10 the unloading of a ship, you were just either loading or un-
11 loading a container?

12 MR. GUCCIARDO: Objection, Your Honor.

13 This is a determination that has to be made by you.

14 MR. LINDEN: I am talking about the physical movement
15 of the cargo.

16 JUDGE GERAGHTY: Objection overruled, Mr. Gucciardo.

17 He is asking the question in a proper form.

18 He is asking at the time of the accident, was he
19 loading or unloading a ship or was he loading or unloading a
20 container.

21 That, I think, is a proper question, Mr. Gucciardo.

22 MR. GUCCIARDO: The Benefits Review Board has already
23 ruled that the process of unloading does not stop at the
24 stringpiece; that the container is unloaded and then it has to
25 be delivered to the consignee and that includes an entire

1 process.

2 There has already been a determination made along
3 those lines.

4 JUDGE GERAGHTY: I realize what the determinations
5 have been with respect to that, Mr. Gucciardo, but that does
6 not prevent Mr. Linden from asking the man what he was doing
7 at the time of his injury, loading or unloading a ship, or
8 loading or unloading a container.

9 What further ramifications flow from that as a
10 matter of law is a wholly different story.

11 BY MR. LINDEN:

12 Q The question is: That you were not taking, checking
13 cargo from a ship that was berthed there or put on there, you
14 were checking cargo that was being taken out of the container
15 that was located at this building, is that correct?

16 A Yes.

17 Q Now, it is also true that you do not know who took
18 the particular container off the ship wherever it was taken
19 off, and put it on the land, do you?

20 A Will you repeat that again, please?

21 Q Yes.

22 You do not know who, what company, what person, took
23 the container upon which you were working at the time you were
24 injured, from the ship, wherever it was, and put it physically
25 on the land?

A Well, if the container come from Holland Hook, it

1 was taken off by American Export Lines.

2 Q But you don't even know that.

3 You don't know where it came from specifically, do
4 you?

5 A Well, the paper is on it.

6 I have to know what is on the papers and the papers
7 clearly explain American Export Lines.

8 The ship belongs to American Export Lines.

9 Q Are you generalizing as to who actually took this
10 container from what ship or don't you recall?

11 A Well, I don't recall the name of the ship that it
12 came off of.

13 But I know that the container came off the ship.

14 Q No question about that.

15 But my only question to you was, you don't know?

16 A It could be any one of a number of ships.

17 It could be the Defiance, the Lightning.

18 JUDGE GERAGHTY: Wait a second, Mr. Blundo.

19 What you are saying, just so we don't get the record
20 confused -- Mr. Linden is asking you what gang of longshore-
21 men took it off the ship?

22 THE WITNESS: No, I don't.

23 BY MR. LINDEN:

24 Q Do you know how long before you started working on
25 this container it had been removed from the ship?

1 A Approximately the same date or the day after.

2 Q Do you know.

3 A No, I don't.

4 Q Is it true, sir, that sometimes a container is
5 removed from a ship at a distant point? It might take several
6 days before it will get to the area before it is unloaded?

7 A Not to my knowledge.

8 Q You don't know, do you?

9 A No.

10 MR. LINDEN: I don't think I have anything else.

11 MR. GUCCIARDO: I have one or two.

12 REDIRECT EXAMINATION

13 BY MR. GUCCIARDO:

14 Q What is the usual period of time from the time a
15 container is unloaded from a vessel up to the time that it is
16 actually delivered to the consignee.

17 MR. LINDEN: I object on the grounds that there is
18 no showing that this claimant knows any of this.

19 JUDGE GERAGHTY: You are going to have to ask a
20 foundation question, then, Mr. Gucciardo.

21 MR. GUCCIARDO: I will correct that.

22 BY MR. GUCCIARDO:

23 Q Do you know of your own knowledge what the procedure
24 is between the time a container is taken off the vessel and
25 delivered to the consignee and how long it takes?

1 A Well, it has to come over to the pier to be stripped
2 and that there could take a week.

3 Q Is this the usual procedure?

4 MR. LINDEN: I object, the question has been
5 answered.

6 JUDGE GERAGHTY: I think I will allow one more
7 question.

8 He has given the procedure, now Mr. Gucciardo is
9 asking, is this the general procedure.

10 THE WITNESS: Generally, when it comes down to the
11 pier, stripped --

12 BY MR. GUCCIARDO:

13 Q Just answer the question.

14 Is this the usual procedure?

15 A Yes, it is.

16 Q Did you follow the usual procedure in this partic-
17 ular case?

18 A Yes, I did.

19 Q Now, you mentioned Murphy Trucking or John Murphy
20 Trucking.

21 Are you paid in any form or fashion by John Murphy
22 Trucking?

23 A No.

24 Q Are you paid by the American Export Lines?

25 A No.

1 Q When the container is actually unloaded from a
2 vessel, it's done by American Export Lines or stevedoring
3 company that works for them?

4 MR. LINDEN: I object, the witness has indicated
5 that he does not know.

6 MR. GUCCIARDO: I am sorry.

7 He did not indicate this particular phase of it.

8 JUDGE GERAGHTY: He has not made any response to
9 this particular question, Mr. Linden.

10 THE WITNESS: It is being done by ITO.

11 BY MR. GUCCIARDO:

12 Q So that the cargo in question was unloaded somewhere
13 by ITO?

14 A Right.

15 JUDGE GERAGHTY: Mr. Linden, you look -- he said it
16 is unloaded by ITO.

17 MR. LINDEN: I understand what he said.

18 BY MR. GUCCIARDO:

19 Q Would ITO be engaged in unloading a container from
20 Pittston Stevedoring Company or Universal Stevedoring Company?

21 A It is.

22 MR. LINDEN: I object.

23 The witness said he doesn't know.

24 MR. GUCCIARDO: I join in the objection and move
25 that the answer be stricken from the record.

1 JUDGE GERAGHTY: That takes care of that, Mr. Linden.

2 BY MR. GUCCIARDO:

3 Q Of your own knowledge, do you know that ITO has
4 stevedoring facilities located in New Jersey as well as the
5 New York area?

6 MR. LINDEN: That is conceded and it is immaterial
7 to the issues here.

8 MR. GUCCIARDO: As long as it is conceded, fine.
9 I have nothing further.

10 RECROSS-EXAMINATION

11 BY MR. LINDEN:

12 Q You told us a little while ago that you did not know
13 who actually took the container from whatever ship it had been
14 on when it was shipped into this country?

15 MR. GUCCIARDO: Objection, Your Honor.

16 What he stated was that he did not know the gang that
17 did it.

18 Not that he did not know who did it, what company
19 did it.

20 I object to the form of the question.

21 MR. LINDEN: I submit my question is based on the
22 record.

23 JUDGE GERAGHTY: I would agree with Mr. Gucciardo.
24 He indicated that he did not know what gang.
25 He did not reflect what company and I think the

1 question as was asked before was extremely narrow.

2 MR. LINDEN: All right.

3 BY MR. LINDEN:

4 Q Do you know what company was employed to remove the
5 particular container which you were working on when you were
6 hurt, from whatever ship it had been on, transporting this
7 container into the United States?

8 A No.

9 MR. LINDEN: That is all.

10 JUDGE GERAGHTY: Mr. Gucciardo, do you have any-
11 thing?

12 REDIRECT EXAMINATION (Continued)

13 BY MR. GUCCIARDO:

14 Q Do you know what stevedoring company had unloaded it
15 from the vessel?

16 MR. LINDEN: I object.

17 The question has been answered.

18 He is leading him into a different answer.

19 MR. GUCCIARDO: No.

20 It isn't, Your Honor.

21 His question was too ambiguous for a direct answer.

22 MR. LINDEN: Not only ambiguous but all inclusive.

23 JUDGE GERAGHTY: I will agree with Mr. Gucciardo.

24 You may answer it.

25 BY MR. GUCCIARDO:

1 Q Do you know what stevedoring company had unloaded
2 this container?

3 A No, I don't.

4 Q Now, do you know this gentleman sitting in the
5 hearing room?

6 A No, I don't.

7 MR. GUCCIARDO: All right.

8 I have nothing further.

9 JUDGE GERAGHTY: Mr. Blundo, let me ask you a couple
10 of questions.

11 Now, on the day of your accident, you were working
12 on the pier inside of a building that goes out over the water,
13 is that correct?

14 THE WITNESS: No.

15 JUDGE GERAGHTY: My notes indicated that you were
16 working on a portion that stuck out over the water.

17 THE WITNESS: Yes, on the stringpiece.

18 JUDGE GERAGHTY: You were working on the stringpiece.
19 You were not outside the building, you were inside
20 the building?

21 THE WITNESS: That is right.

22 JUDGE GERAGHTY: And you were engaged as a checker
23 in the stripping of a van?

24 THE WITNESS: Yes.

25 JUDGE GERAGHTY: And is a van equal to a container,

1 do the words mean the same thing?

2 THE WITNESS: Yes, sir.

3 JUDGE GERAGHTY: And the container belonged to who?

4 THE WITNESS: American Export Lines.

5 JUDGE GERAGHTY: The work was being done by ITO?

6 THE WITNESS: Yes, sir.

7 JUDGE GERAGHTY: With the longshoremen stripping the
8 container -- who were they employed by?

9 THE WITNESS: ITO.

10 JUDGE GERAGHTY: Did you have papers in your hands?

11 THE WITNESS: Manifest sheet.

12 JUDGE GERAGHTY: What was shown on those papers?

13 THE WITNESS: The description of the cargo and the
14 consignee and the amount.

15 JUDGE GERAGHTY: Did it show where the container
16 had come from?

17 THE WITNESS: Yes, it does.

18 JUDGE GERAGHTY: Do you remember, of your own
19 knowledge right this moment where?

20 THE WITNESS: No, because that was the first or
21 second draft that it had come out of.

22 JUDGE GERAGHTY: When you said it took a week to do
23 something, was that the week for the cargo after it comes out
24 of the container before it gets in the hands of the consignee,
25 or is it a week possibly between the time the container comes

1 off the ship until it gets to you?

2 THE WITNESS: It could be up to the time it comes to
3 me.

4 JUDGE GERAGHTY: It could be as much as a week?

5 THE WITNESS: Yes.

6 JUDGE GERAGHTY: On this particular container, do
7 you know how long it had been since it had come off the ship?

8 THE WITNESS: No, I don't.

9 JUDGE GERAGHTY: Had it been opened at any time prior
10 to the time you started stripping?

11 THE WITNESS: No, they come in with a seal.

12 The seal has to be broken and shown to Customs.

13 JUDGE GERAGHTY: Your action is the first time that
14 the container starts to be stripped or unloaded, the cargo
15 from outside the van?

16 THE WITNESS: Right.

17 And we have to record the serial number and the seal,
18 all that.

19 JUDGE GERAGHTY: Now, sir, I take it a draft, because
20 this is new terminology to me, a draft is a portion of the
21 cargo that is inside the container that is put on a pallet?

22 THE WITNESS: Yes.

23 JUDGE GERAGHTY: Is that correct?

24 THE WITNESS: That is right.

25 JUDGE GERAGHTY: That is what you were marking, a

1 portion of this cargo?

2 THE WITNESS: You see, the manifest sheet is given
3 a number and an item number.

4 Now, it could be, let us say they assign a number
5 735, Item No. 1.

6 We have to mark that on the draft.

7 JUDGE GERAGHTY: And the draft could be maybe six
8 bags on top of a pallet?

9 THE WITNESS: It could be six bags, it could be any
10 amount.

11 JUDGE GERAGHTY: But that comes out of the container,
12 put on a pallet and you mark that?

13 THE WITNESS: Right.

14 JUDGE GERAGHTY: That is what you were doing at the
15 time you slipped and fell?

16 THE WITNESS: Right.

17 JUDGE GERAGHTY: Mr. Linden, did you have a question?

18 MR. LINDEN: If you are finished, yes.

19 JUDGE GERAGHTY: Thank you for educating me, Mr.
20 Blundo.

21 RECROSS-EXAMINATION (Continued)

22 BY MR. LINDEN:

23 Q Mr. Blundo, you marked pieces of cargo that were
24 removed from this container by your fellow longshoremen, is
25 that right?

1 A Right.

2 Q Now, were these -- was the cargo that was taken out,
3 did that consist of crates, bags, barrels, various sorts of
4 containers holding merchandise inside each particular container,
5 I mean, each particular package?

6 A It could be cartons, it could be crates, it could be
7 bags, it could be almost anything.

8 Q You don't open up an individual crate that is part
9 of the cargo, do you?

10 A No, we don't.

11 Q You are just concerned with the bulk outside appear-
12 ance of the package in which the cargo has been placed by the
13 shipper?

14 A No.

15 I am concerned with the marks on it.

16 Q I understand that, but it is only the crate itself,
17 or the container, or the ball, that you are concerned with,
18 and the marks on it?

19 A Right, not with the contents.

20 MR. LINDEN: Not with the contents.

21 That is all.

22 MR. GUCCIARDO: One or two questions, if I may.

23 REDIRECT EXAMINATION (Continued)

24 BY MR. GUCCIARDO:

25 Q This seal that you say you have to break on the

1 container in order to get in, where is it placed?

2 A The seal is broken.

3 We record the number on it.

4 Q Who seals it and where is it done?

5 A It is sealed on the other side, Europe, where the
6 container comes from.

7 Q In a foreign port.

8 Then, are you the first person to break this seal
9 after the container arrives in the United States?

10 A Right.

11 Q Does the container contain merchandise from one
12 consignee or multiple consignees?

13 A Multiple consignees.

14 Q Is this the reason that the stuff has to be removed
15 from the container and then separated for the various consignees?

16 A That is right.

17 Q You mentioned the word "stringpiece."

18 A Right.

19 Q Will you tell us what the word "stringpiece" is and
20 what the function is?

21 A It is a piece that runs along the pier.

22 JUDGE GERAUGHTY: I am familiar with that terminology.
23 Mr. Gucciardo, thank you.

24 BY MR. GUCCIARDO:

25 Q Is there water under the stringpiece?

1 A Yes.

2 MR. GUCCIARDO: I have nothing further, Your Honor.

3 JUDGE GERAGHTY: Thank you very much, Mr. Blundo.

4 Thank you for explaining that to me.

5 I did not understand the word you were using.

6 Mr. Linden, do you have a witness?

7 MR. LINDEN: I have a witness.

8 Mr. Cash.

9 Whereupon,

10 ALBERT W. CASH

11 was called as a witness, and after having been first duly
12 sworn by the Administrative Law Judge, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. LINDEN:

16 Q What is your name?

17 A Albert W. Cash, C-a-s-h, International Terminal
18 Operating Company, 17 Battery Place, New York, New York, 10004.

19 Q Are you employed by ITO?

20 A Yes.

21 MR. LINDEN: May I use ITO, Judge Geraghty?

22 JUDGE GERAGHTY: Certainly.

23 THE WITNESS: Yes.

24 BY MR. LINDEN:

25 Q What is your capacity there?

 A I am the Director of Safety for ITO.

1 Q For how long have you been such Director?

2 A This assignment, fifteen years.

3 Q Are you familiar with the business of ITO at the
4 location at 19th and 20th Streets on the Brooklyn waterfront
5 where this claimant was working at the time of his injury?

6 A Yes, sir.

7 Q Do you know what he was doing at the time he was
8 injured?

9 A According to the investigation of the accident, he
10 was checking --

11 MR. GUCCIARDO: Objection, Your Honor.

12 The question is: Does he know?

13 He says according to the investigation, and I object
14 to the answer and move that it be stricken.

15 JUDGE GERAGHTY: On the grounds of what?

16 MR. GUCCIARDO: That this is not within his
17 knowledge.

18 JUDGE GERAGHTY: It does not appear from his
19 knowledge that he has personal knowledge, Mr. Linden.

20 MR. LINDEN: First, let him answer whether he knows.

21 BY MR. LINDEN:

22 Q Do you know what he was doing at the time he was
23 injured?

24 A Yes, sir.

25 Q How do you know?

76a

1 A As a result of an investigation of an accident
2 concerning Mr. Blundo, he was working as a checker at a --

3 MR. GUCCIARDO: Objection, Your Honor.

4 The same grounds, it is not within his knowledge.

5 JUDGE GERAGHTY: Now, I am not clear whether or not
6 it is.

7 Now, Mr. Cash, when you say according to an investi-
8 gation, is it your investigation?

9 THE WITNESS: Yes, sir.

10 JUDGE GERAGHTY: You performed it?

11 THE WITNESS: Yes, sir.

12 JUDGE GERAGHTY: Or people working directly for you
13 who reported back to you?

14 THE WITNESS: And people working directly for me.

15 JUDGE GERAGHTY: This is the usual course of the way
16 things are done?

17 THE WITNESS: Yes, sir.

18 JUDGE GERAGHTY: Since this is an administrative
19 proceeding, I am going to allow him to testify.

20 Since this is apparently what he does, Mr. Gucciardo.

21 However, it would go, of course, to the weight of
22 the testimony, unless it is something that he personally knows
23 himself.

24 So I would appreciate what you draw, Mr. Linden, as
25 to whether it is one of his investigators reporting back to

1 to him or whether it is something that he found out himself.

2 MR. LINDEN: I intend to, Judge Geraghty.

3 JUDGE GERAGHTY: Thank you.

4 BY MR. LINDEN:

5 Q In the course of this investigation which you state
6 was conducted by you and by other people, were there records
7 that are kept by the company in the normal regular course of
8 business in respect of the claimant's activities and also the
9 manner in which he was injured?

10 A Yes, sir.

11 Q Did you consult those records?

12 A We have an accident report which contains all the
13 information, the location of the accident, the man's position,
14 or the type of work he was performing at the time of the
15 accident, date, injury, things of that nature.

16 Q Are you familiar with the type of checking that he
17 was doing in checking the contents of the container that was
18 being unloaded when he was hurt?

19 A Yes, sir.

20 Q To whom did this container belong?

21 MR. GUCCIARDO: Objection, Your Honor.

22 No proof in the record that he knows which container
23 it was or how he established this.

24 JUDGE GERAGHTY: I think he has already laid
25 sufficient foundation because he has testified that he has

1 consulted the investigation reports and this contains all the
2 information as to what was transpiring at the date, time and
3 place of the accident, which Mr. Blundo was involved in, and
4 without going into agonizing detail as to each item that he
5 knows, may I just be clear, unless I am mistaken, is it your
6 testimony, Mr. Cash, that this investigation report shows all
7 the details with respect to what Mr. Blundo was doing at the
8 time he was injured?

9 THE WITNESS: Yes, sir.

10 JUDGE GERAGHTY: On those grounds, your objection is
11 overruled.

12 BY MR. LINDEN:

13 Q When was this investigation conducted, how long
14 after the accident?

15 A I became involved in it, I believe, the day follow-
16 ing the accident, sir.

17 The investigation was made on the day of the
18 accident, prior to my arriving down there.

19 Q Were you able to identify the container on which the
20 claimant had been working at the time his injury occurred?

21 A No, sir.

22 Q Were you able to identify generally to whom the
23 container belonged?

24 A No, sir.

25 Q Do you know anything as to what happened to that

1 container after the claimant was injured?

2 A In the container?

3 Q Injure the container itself?

4 A No, sir, I do not.

5 Q At this location, is ITO engaged in taking cargo
6 off ships or putting it on ships?

7 A At this --

8 Q At this location where the claimant was working on
9 19th Street.

10 A We do not use that pier, sir, that section of the
11 pier which is the northeast side for loading or discharging
12 from ships.

13 MR. GUCCIARDO: Objection, Your Honor.

14 The question was: At this pier, not the northeast
15 side.

16 The man is restricting the answer.

17 MR. LINDEN: He should restrict the answer because I
18 asked him about the location where the claimant was working at
19 19th and 20th Streets.

20 JUDGE GERAGHTY: My understanding of the question,
21 Mr. Gucciardo, he was asking specifically as to the place where
22 the claimant was working, which he stated was the stringpiece
23 at the 19th Street pier.

24 BY MR. LINDEN:

25 Q What operations are conducted by ITO at this

1 location where the claimant was injured; what were they doing
2 there?

3 A Storage of various types of commodities, both ITO's
4 and other parties, and also stripping and stuffing station
5 which at that time we were operating for an outside contractor.

6 Q What outside contractor?

7 A American Export Lines.

8 Q The claimant has testified that this particular
9 container had come from American Export Lines and was being
10 unloaded for them.

11 Does ITO have anything to do with the movement of
12 that container into your facility at 19th Street?

13 A No, sir.

14 Q Who brings the container into this area?

15 A A common carrier, sir.

16 Q Do you know who takes the containers on which you
17 were working, or rather the claimant was working at the time
18 he was injured, what company, or what instrumentality actually
19 physically takes the container from the ship after it has
20 arrived at wherever it is being unloaded?

21 A No, sir.

22 Q Has it anything to do with the conduct of your
23 business in taking cargo out of the container for American
24 Export Lines as to who, where or when this container was
25 physically removed from the ship?

A No, sir. 81a

1 Q Who retains you, who retains ITO to remove cargo
2 from a container, American Export Lines containers?

3 A American Export Lines.

4 Q Do you have -- does ITO have anything whatsoever to
5 do therefore with the loading or unloading, that is, the plac-
6 ing onto a ship or the removal from a ship of these containers
7 in which you were engaged in checking cargo at the facility
8 at 19th Street?

9 A No, sir.

10 Q Is it true that in other areas ITO and at another
11 portion of this facility, ITO does load and unload ships?

12 A Yes, sir.

13 Q Is it correct, therefore, that ITO is engaged in
14 several different operations, part of which concerns the
15 loading and unloading of ships, part of which has to do with
16 the placing of cargo into a container and the removing of
17 cargo from a container?

18 A Yes, sir.

19 Q Is ITO also in the business of warehousing mer-
20 chandise in this general facility area for further trans-
21 shipment into other areas?

22 A Yes, sir.

23 Q Do you know from what ship the container from which
24 the claimant was working had come?

25 A No, sir.

1 Q Now, he has stated that a container could be at your
2 facility up to a week before it was loaded or unloaded, is that
3 correct?

4 A Would you repeat that?

5 Q Yes.

6 The claimant has told us that when a container is
7 brought to the facility, that is, the container for emptying
8 or filling by your people, for American Export Lines, that the
9 container can stay there for a day or a week, is that correct?

10 A It could stay there considerably longer, sir.

11 Q What do you mean by considerably longer?

12 A It depends upon the expediting of the container by
13 the agent for the American Export Line, whether or not it is
14 required in a hurry up job or not.

15 We don't know. It can be there for a few days, a
16 week, we don't know.

17 But they do try, according to the requirements that
18 the contractor places on ITO, to get the containers in and out.

19 Q Now, cargo that is placed in a container, and cargo
20 that is taken from the container, is that marked in any
21 fashion?

22 Is it in a crate or a barrel or a carton of some
23 sort?

24 A It comes off various types of packages in the con-
25 tainer. It might be one standard package throughout. It might

1 be one full load of, say for example, bag cargo, drum cargo.

2 It could be almost anything, but when you break down
3 a container that is less than a load, a full load, then it
4 will be a variety of types of cargo going to various companies
5 or locations.

6 Q Now, you say that you use containers where the
7 cargo that a shipper is sending out or going to receive less
8 than a full load, you mean less than a full load to fill a
9 container?

10 A For one person.

11 Q Are there some containers that --

12 A It is a consolidated unit.

13 MR. GUCCIARDO: Your Honor, I am going to object to
14 this line of questioning on the basis of counsel's objection
15 to my line of questioning.

16 We are concerned here with what the man was doing at
17 a particular time.

18 Now, he is going into generalities, as to what
19 containers contain, less than one carload. It is immaterial
20 to the issues.

21 MR. LINDEN: May I point out that Mr. Gucciardo
22 began to refer to decisions of the Benefits Review Board, in
23 respect of the characterization as to what was being done and
24 thereby determining whether this made it maritime employment
25 or not.

1 Our position is that you must, therefore, examine
2 the character, nature of the activities in which he was
3 engaged, in order ultimately to be able to determine whether
4 the activities in which he was engaged constituted maritime
5 admiralty material.

6 JUDGE GERAGHTY: I agree.

7 I don't need anymore, Mr. Gucciardo.

8 You recall, Mr. Linden, I allowed it only as a
9 proffer for purposes of appeal.

10 I don't believe that it is relevant to the deter-
11 mination herein.

12 I will let you go on.

13 I think you developed it far enough.

14 If you have one or two more questions.

15 MR. LINDEN: I have one or two more questions and I
16 intend to tie it into the legal concept on which we are basing
17 our defense.

18 JUDGE GERAGHTY: With that offer, I will allow you
19 to develop your record since it is some indication that there
20 may be an appeal.

21 BY MR. LINDEN:

22 Q Are there some containers that are completely filled
23 and destined for a particular consignee or that a shipped
24 fills completely, that ITO does not handle at all at this
25 facility?

1 A Yes, house-to-house containers is one.

2 Going to one single consignee, we would not even
3 bother with that.

4 You are talking stripping and stuffing of individual
5 containers in order to remove or reconsolidate cargo.

6 Q All right.

7 Now, the claimant has told us that when he opens the
8 seal on a container, that the longshoremen then remove the
9 various crates, cartons, boxes, bags or whatever the cargo is
10 contained in from the container, and places it in the ware-
11 house for picking up by the consignee, is that correct?

12 A That happens, yes.

13 Q Is it also true that the individual crate that was
14 part of the consolidated shipment in the container, an indi-
15 vidual crate, is not opened by ITO?

16 MR. GUCCIARDO: Objection, Your Honor, to the form
17 of the question.

18 Is it also true?

19 He has been using it time and time again.

20 I think it is now time that he be admonished that
21 this is his witness and the question should be placed accord-
22 ingly.

23 JUDGE GERAGHTY: He may have been doing it, but you
24 have not been objecting up to this point.

25 MR. GUCCIARDO: Yes, because I knew what was going

1 to be elicited and it was not material.

2 But now we are going into an area that is material.

3 The fact that I did not object before does not mean
4 that it was not objectionable.

5 JUDGE GERAGHTY: I did not mean that you were
6 waiving it --

7 MR. LINDEN: Since there is an objection, I will
8 rephrase it differently.

9 JUDGE GERAGHTY: Please do.

10 BY MR. LINDEN:

11 Q Mr. Cash, does ITO open up an individual crate in
12 which cargo has been packed by a shipper?

13 A Only on direction of the Customs, an individual
14 carton, they may have reason for it.

15 Q Normally, does ITO know whether there is one or
16 several different items of cargo contained in a crate that is
17 being received or sent out by a shipper?

18 MR. GUCCIARDO: Objection.

19 What is contained in a crate that is empty?

20 JUDGE GERAGHTY: I would agree.

21 I don't see whether it is relevant as to whether it
22 is maritime employment or not.

23 MR. LINDEN: May I state where it is relevant,
24 Judge Geraghty?

25 JUDGE GERAGHTY: Please do.

1 MR. LINDEN: It is quite obvious that a container
2 is like a big box, somebody takes a whole bunch of smaller
3 crates and puts them in this big box and they are then sent
4 someplace else.

5 A shipper similar can take a big crate and put five
6 or six or ten items in that one crate.

7 The use of a container does not carry with it a
8 necessity, the inference that because a container is used, it
9 has assumed character of maritime or admiralty jurisdiction.

10 It is a big box.

11 Instead of sending a bunch of small boxes, they are
12 sending a big box to send overseas.

13 Our contention is therefore in order for the Long-
14 shoremen and Harbor Workers' Compensation Act to apply to a
15 particular occupation at a particular time, the occupation
16 itself must be such that it has come out of the character of
17 an area of States jurisdiction into the area of maritime juris-
18 diction, where the law will apply.

19 Now, in this case it is quite clear that ITO was not
20 engaged in the loading or unloading of a ship.

21 All they were doing is unloading a box and emptying
22 a box.

23 That is all.

24 That is the basis upon which we believe. The
25 theoretical analysis of the application of the law, both as it

1 is written and as to its constitutionality must be approached.

2 JUDGE GERAGHTY: I understand why you are asking the
3 question then, Mr. Linden.

4 Since that apparently is the theory of this case,
5 without passing again on the merits of it, I will allow it
6 just for development of the record.

7 Mr. Gucciardo, I realize you have taken the contrary
8 position.

9 MR. GUCCIARDO: Just allow me to make one more
10 remark.

11 I am not arguing with Your Honor, but he has stated
12 that the shipper puts his in the container. It is put in by
13 the stevedoring company wherever the vessel is --

14 JUDGE GERAGHTY: I don't take what either one of
15 you gentlemen has said as evidence.

16 I take it as positions that you have assumed for
17 purposes of your contentions.

18 MR. LINDEN: I guess that my direction wasn't
19 clear, because obviously I intended to come to that point and
20 that is when Mr. Gucciardo, as I approached this area, Mr.
21 Gucciardo objected.

22 JUDGE GERAGHTY: I understand.

23 Thank you, Mr. Linden.

24 Go ahead and finish your questions.

25 BY MR. LINDEN:

1 Q Who puts whatever articles are contained in the
2 crate for overseas shipment into that crate?

3 A The manufacturer or the people that are selling them
4 to some, to whoever they sell them to.

5 For example, a crate of small parts for automobiles
6 and crates --

7 MR. GUCCIARDO: I will concede that the crate is
8 loaded by the manufacturer.

9 It is immaterial to the issues.

10 MR. LINDEN: Good. That is helpful.

11 MR. GUCCIARDO: But not the container.

12 JUDGE GERAGHTY: I understand the extent of your
13 concession.

14 I understand your position, Mr. Linden.

15 MR. LINDEN: May I make one definition, though?

16 I think that the use of the word "container" should
17 refer to the large van or container into which various items
18 of cargo are consolidated, sealed and then placed on the ship
19 as contrasted with a barrel or crate or carton or bag.

20 JUDGE GERAGHTY: I was following it that way, Mr.
21 Linden.

22 I was assuming that we are all using the same
23 definition.

24 MR. LINDEN: I was up to a second ago, and then I
25 wanted to make sure.

1 May the witness continue?

2 He started to say the manufacturer of automobile
3 spare parts.

4 JUDGE GERAGHTY: I don't think we would have to go
5 into it any further.

6 I would assume that ITO does not load every box or
7 sack, especially if it is not a non-consolidated van.

8 They would be loaded by the coffee pickers or the
9 ones who are making the automobile parts or whatever you might
10 have, the oil drums.

11 MR. LINDEN: Can I also obtain a concession if we
12 take the example that the witness referred to, we have a
13 manufacturer of automobile parts who consolidates in the
14 crates, which they assemble and send down to the shipper, that
15 it is the consolidation of differing pieces of cargo that he
16 is going to send to one particular destination?

17 MR. GUCCIARDO: The implication there is going a
18 little too far.

19 The shipper puts it in a carton and they have
20 multiple cartons. It is palletized by longshoremen and then
21 put 1 van depending on what port it is going to and how
22 many consignees are delivering for that particular port.

23 I will stipulate to that.

24 JUDGE GERAGHTY: When you stipulate to that, is
25 that the import?

91a

1 MR. LINDEN: Yes, but that is not quite as far as I
2 wanted to go, nor does it answer what I asked which is: Are
3 there crates into which a shipper consolidates several differ-
4 ent types of parts and then closes that one crate and sends it
5 down to the waterfront for shipment overseas?

6 JUDGE GERAGHTY: Mr. Cash, do you know that of your
7 own knowledge, the answer to that question?

8 THE WITNESS: I didn't hear that last one.

9 Would you repeat it?

10 MR. LINDEN: The question is, Mr. Cash: Do you
11 have a shipper who is a manufacturer of auto parts, do you
12 know if a shipper of auto parts, takes a number of auto parts
13 in a single crate, which is then shipped to a single consignee
14 overseas?

15 THE WITNESS: Yes, sir.

16 MR. LINDEN: That is all.

17 JUDGE GERAGHTY: Is that it?

18 MR. LINDEN: Yes, sir.

19 JUDGE GERAGHTY: Do you have any cross?

20 CROSS-EXAMINATION

21 BY MR. GUCCIARDO:

22 Q Mr. Cash, as a Safety Director, actually you are
23 concerned with all types of accidents that occur on the water-
24 front, is that right?

25 A Yes, sir.

1
2 Q As a Safety Director, you keep records of all these
3 accidents, is that correct?

4 A Yes.

5 Q Did you bring those records with you today?

6 A No, sir, I did not.

7 Q When did you consult them last?

8 A Quite some time ago.

9 Q How long ago?

10 A Are you referring specifically to Mr. Blundo's
11 statement?

12 Q Mr. Blundo's statement.

13 When did you consult those records last?

14 A A few months ago is about the best I can say at the
15 moment.

16 Q Would that be about three months and possibly six
17 months?

18 A Yes, sir.

19 I review accidents, frequently at the end of the
20 year.

21 Q And ITO has a great number of accidents, do they not?

22 A No, sir.

23 We don't have a great number of accidents.

24 Q How many accidents does ITO have in the course of the
25 year?

MR. LINDEN: Objection, immaterial.

1
2 MR. GUCCIARDO: I am testing his memory.

3 JUDGE GERAGHTY: I think I will allow it on cross
4 since he said he reviews accidents, it might go to the weight
5 of the accuracy of the investigation report.

6 Mr. Cash, go ahead and answer it.

7 Your best estimate.

8 THE WITNESS: The number of accidents, my best
9 recollection as of right now, during the course of the year of
10 1974, we have had throughout ITO, which is a very large firm,
11 somewhere in the vicinity of 778. I believe. Give or take a
12 few, sir.

13 BY MR. GUCCIARDO:

14 Q 700 to 800 accidents, right?

15 A Accidents and/or incidents which were reported as
16 accidents.

17 So we will put it as that way.

18 Q Would it be fair to state that every time you have
19 an accident, the accident report comes in with the cargo that
20 was involved and the ship it came from?

21 A It comes under the jurisdiction, it will have the
22 name of the ship right on the report, sir.

23 Q Right.

24 A There is quite a bit of information.

25 Q Would it be fair to say, then, that since this
cargo had been offloaded from the ship, if there was an

1
2 identity of the cargo involved with the accident, that the name
3 of the ship involved or the name of the ship on which this
4 cargo had been carried would be associated with the accident
5 report?

6 A Of my personal knowledge, I don't know that that
7 cargo was unloaded from the ship or what ship it may have
8 been or when it was discharged. They were merely a freightway
9 station where we were transferring or consolidating or strip-
10 ping a container.

11 Q All right.

12 Now, does the ITO company conduct stevedoring
13 activity for the American Export Lines?

14 A No, sir.

15 Q Do you consider that stuffing and unstuffing a
16 container is not the business of stevedoring activities?

17 A No, sir.

18 MR. LINDEN: I object.

19 That is a legal question.

20 JUDGE GERAGHTY: Sustained on that grounds.

21 If you are asking for a legal conclusion.

22 Off the record.

23 (Discussion off the record.)

24 JUDGE GERAGHTY: Back on the record.

25 The interruption was for the changing of the paper
in the court reporter's machine.

1
2 BY MR. GUCCIARDO:

3 Q Are you familiar with the loading and unloading
4 process that is required of a vessel in order to ship goods or
5 to receive goods?

6 A Yes, sir.

7 Q Would it be fair to state, then, that in order to
8 ship goods, that the cargo has to be received by the steve-
9 doring company, it is then put in containers or vans and then
10 placed on board a vessel?

11 MR. LINDEN: I object.

12 There are other alternatives also.

13 THE WITNESS: No, sir.

14 JUDGE GERAGHTY: Wait a second.

15 Your objection is that there are other ways, this is
16 the only way of doing this?

17 MR. GUCCIARDO: We are involved with containers.

18 I have to concede that there are other ways, too.

19 MR. LINDEN: Then I have no objection.

20 JUDGE GERAGHTY: Mr. Cash, what you are being asked
21 with respect to containerized cargo, is this a general way that
22 a containerized cargo would be handled, if you know?

23 THE WITNESS: In general, this is one of many ways,
24 yes.

25 BY MR. GUCCIARDO:

Q And similarly, when cargo is discharged from a

1
2 vessel, the container is removed from the vessel and then
3 landed on the stringpiece and then put in some facility for the
4 purposes of stripping the container, is that correct?

5 A Yes, sir.

6 Q Is the purpose for stripping a container to remove
7 the various cargo that is contained therein, which is destined
8 for miscellaneous consignees?

9 A In the case of a container which has various
10 commodities to various consignees, it would be stripped, yes,
11 sir.

12 Q And where the container has cargo destined for one
13 consignee only, it would not be stripped, then, or would it?

14 A No, sir, it would not be stripped.

15 Q Then it would be directly given to the consignee?

16 A To the consignee going through the normal formality
17 of clearance and everything else, yes, sir.

18 Q And in importing cargo from overseas, do they put a
19 seal on the container?

20 MR. LINDEN: Who is they?

21 BY MR. GUCCIARDO:

22 Q Is a seal put on a container?

23 A We do put seals on containers, yes, sir.

24 I can't speak for everyone else.

25 Q Is that the way --

A It depends on the commodities within the container,

1
2 sir.

3 Q Is there certain merchandise that has to be put in a
4 bonded warehouse until the consignee receives them?

5 A Depending on the Customs regulations, sir.

6 Q All right.

7 And is, if the Customs regulations required, is it
8 then put in a bonded warehouse facility for the purposes of
9 Customs, whatever it may be, to pay the duties?

10 A As designated by the Customs, sir.

11 Q When Customs clears it, is it then delivered to the
12 consignee?

13 A Depending upon when the bonded warehouse is.

14 Q In this particular case, do you have a bonded
15 warehouse at the pier at 21st Street in Brooklyn?

16 JUDGE GERAGHTY: If you know, Mr. Cash.

17 I don't know if we have a bonded warehouse on 21st
18 Street, sir.

19 BY MR. GUCCIARDO:

20 Q Were you present when the claimant testified in this
21 room this morning?

22 A Yes, sir.

23 Q Did you hear him testify that the goods had to go
24 into a bonded warehouse?

25 A Yes, sir.

Q Do you have any reason to dispute that?

1
2 A I will have to double check whether or not we are
3 actually physically licensed as licensed bonded warehousemen
4 at 21st Street.

5 Q At the present time you have no reason to dispute
6 that, do you?

7 JUDGE GERAGHTY: What he is asking you, of your own
8 knowledge right now, you don't know whether there is a bonded
9 warehouse at 21st Street?

10 THE WITNESS: A formal bonded warehouse at 21st
11 Street, I do not know of, sir.

12 BY MR. GUCCIARDO:

13 Q Okay.

14 Now, is it part of the normal unloading process
15 before the consignee gets the goods, and now we are dealing
16 with goods that have to be put in a bonded facility until it
17 is delivered to the consignee to unload the container from a
18 vessel, then put it in a bonded warehouse and then deliver it
19 to the consignee from that bonded warehouse, is that the
20 normal procedure, sir?

21 A It is generally held on the pier in custody, not a
22 bonded warehouse per se, sir.

23 In custody, not a bonded warehouse.

24 Q Is this in the custody of the stevedoring company
25 then?

A Under the direction, yes, sir, under the direction

1
2 of the Customs, yes, sir.

3 Q If this were, in fact, a bonded warehouse, these
4 goods would be in your custody at the pier until it is
5 delivered to the consignee?

6 MR. LINDEN: Wait just a minute.

7 I think there are two questions there.

8 JUDGE GERAGHTY: Yes.

9 I think we are getting awfully far afield, Mr.
10 Gucciardo.

11 I would trust that we are going to end this line of
12 questioning.

13 MR. GUCCIARDO: Your Honor, I don't think it is far
14 afield at all.

15 I am trying to get into the usual practice of un-
16 loading as far as this gentleman knows, goods that are bonded
17 and where it has to go and why it goes to a particular facility,
18 and this is part and parcel of the unloading process.

19 JUDGE GERAGHTY: I think you have explored it two to
20 three times now, Mr. Gucciardo.

21 That is why I wonder why you are going through it
22 again with him, since he really doesn't know what goes on at
23 21st Street pier.

24 MR. GUCCIARDO: That is why my questions are in a
25 general form.

Is the usual process of the unloading to put it in a

1
2 bonded facility, and then have Customs check it and then
3 deliver it to the consignee?

4 Is that the usual procedure?

5 JUDGE GERAGHTY: Answer that question if you can,
6 Mr. Cash.

7 THE WITNESS: I can't answer that question the way
8 you have asked it.

9 You keep injecting bonded warehouse and I don't know
10 if we have one.

11 BY MR. GUCCIARDO:

12 Q Assume that there is a bonded warehouse, is that the
13 usual procedure?

14 MR. LINDEN: I object to the assumption.

15 We can very easily find out.

16 MR. GUCCIARDO: There was testimony that there was a
17 bonded warehouse.

18 My man testified to that.

19 MR. LINDEN: No, he didn't.

20 JUDGE GERAGHTY: Wait, Mr. Linden.

21 I don't think the question is relevant as to a
22 determination of Mr. Blundo's status at the time.

23 I realize that he has made reference to bonded
24 material in his direct testimony this morning, Mr. Linden.

25 Unless you feel that you really need this answer for
purposes of clarification of the record or an appeal --

1
2 MR. GUCCIARDO: I really do think I need it, Your
3 Honor.

4 I like to believe that I don't ask questions that
5 are unnecessary.

6 JUDGE GERAGHTY: As a hypothetical question, Mr.
7 Cash, assuming that there is a bonded warehouse and I will
8 take it as a hypothetical, assume that there is, then go ahead
9 and ask your question, Mr. Gucciardo.

10 BY MR. GUCCIARDO:

11 Q Is it the usual procedure, assuming there is a
12 bonded warehouse at the 21st Street pier facility, to strip
13 the container, put it in the warehouse, have Customs clear it
14 and then deliver it to the consignee?

15 A Yes, sir.

16 Q Does the consignee -- now, this is not a general
17 question, does the consignee arrive at the pier facility at
18 21st Street and pick up the cargo that is located at that
19 pier, is that the end?

20 A No, sir.

21 The consignee will not necessarily pick up the
22 cargo.

23 Q Does the consignee send a truckman to pick it up?

24 A Under normal -- under many conditions a truck would
25 come down acting for the consignee, sir.

Q When the truckman picks it up and signs a receipt to

102a

1
2 the stevedoring company, do your obligations as a stevedoring
3 company end with the signed receipt from the truckman?

4 JUDGE GERAGHTY: If you know, Mr. Cash?

5 THE WITNESS: I don't know, sir.

6 BY MR. GUCCIARDO:

7 Q You are not familiar with the loading and unloading
8 of vessels with the International Terminal Operating Company?

9 MR. LINDEN: I object.

10 He did not say that.

11 MR. GUCCIARDO: This goes to the veracity.

12 JUDGE GERAGHTY: Mr. Gucciardo, I am not going to
13 allow you to ask the question in that way.

14 He says he doesn't know when the obligation as a
15 matter of contractual agreement ends.

16 MR. GUCCIARDO: That is what you said, but I did not
17 ask that question.

18 JUDGE GERAGHTY: That is the way I interpreted your
19 question.

20 MR. GUCCIARDO: I did not intend contractual agree-
21 ment.

22 I realize that this gentleman may not know what this
23 means, either.

24 MR. LINDEN: I certainly didn't.

25 BY MR. GUCCIARDO:

Q Mr. Cash, when a container is taken off a vessel and

1
2 it is stripped, and it is then delivered to the truckman who
3 is sent by the consignee, does the stevedoring company after
4 the truckman signs for the receipt of the goods, have anything
5 further to do with that cargo?

6 A Yes, sir.

7 Q What do they have to do with it?

8 A Take care of any objections the receiver or
9 consignee may have when he makes known his shortages, his
10 damages, things of that nature, that would continue on for a
11 period of time.

12 Q You are talking about claims now?

13 A Yes, it is part of it.

14 Q But does the stevedoring company have anything to
15 do physically with that cargo after the truckman, truckman's
16 consignee accepts it and signs a receipt for it?

17 A Just like any other freight station, no.

18 It would have finished.

19 Q Up until the time that the truckman picks up the
20 cargo, is it not true that whatever handling has to be done in
21 relation to this cargo, is done by longshoremen?

22 MR. LINDEN: Just a minute.

23 I object to that.

24 JUDGE GERAGHTY: It is an awfully broad question,
25 Mr. Gucciardo.

Any handling.

1
2 MR. GUCCIARDO: All right.

3 Let us get down to the nitty-gritty of it.

4 BY MR. GUCCIARDO:

5 Q Is it not true that when it is stripped from a
6 container, is it put on board the truck by longshoremen?

7 A The truck loader may do it himself, sir.

8 Q He may do it himself?

9 A Yes, sir. Sure.

10 Q In conjunction with the longshoremen?

11 A In conjunction with them. Yes, sir, you have to
12 have a checker there.

13 Q It may be the same checker as we have here, Mr.
14 Blundo?

15 A It is quite possible, sir. I don't know.

16 Q And also working with the checker and the legman --
17 incidentally, that is the man who works on the truck?

18 A Yes, I am familiar with that.

19 Q With the trucker known as the legman?

20 A Yes, sir.

21 Q You may have a hilo operator, too?

22 A Yes.

23 Q He is a longshoreman?

24 A Yes, sir.

25 MR. LINDEN: I object to the word "longshoreman"
unless it is defined.

1
2 JUDGE GERAGHTY: I would think the definition of
3 longshoremen will be up to me.

4 I am not taking Mr. Gucciardo's statement of nominat-
5 ing everybody as longshoremen, ipso facto, as longshoremen.

6 MR. LINDEN: That is the reason I made my objection.

7 BY MR. GUCCIARDO:

8 Q Mr. Cash, is the ITO Company a member of the New York
9 Shipping Association?

10 MR. LINDEN: I object.

11 It is immaterial.

12 We are, but it is immaterial.

13 JUDGE GERAGHTY: What is the materiality?

14 MR. GUCCIARDO: If I declare the materiality now,
15 I am going to tip off this man as to how to answer.

16 JUDGE GERAGHTY: With that representation, I will
17 allow it for the purposes of the record.

18 THE WITNESS: Is the ITO company a member of --

19 BY MR. GUCCIARDO:

20 Q The New York Shipping Association?

21 A Along with many other port associations, they are
22 also a member of the New York Shipping Association.

23 Q Does the New York Shipping Association have a con-
24 tract with the International Longshoremen's Association?

25 MR. LINDEN: I object.

It is immaterial.

1
2 JUDGE GERAGHTY: What is the materiality, Mr.
3 Gucciardo?

4 MR. GUCCIARDO: The materiality is that ITO only
5 handles longshoremen to handle their cargo, Your Honor, and I
6 am coming to that in a minute.

7 JUDGE GERAGHTY: Are you trying to establish that
8 ITO is an employer?

9 MR. GUCCIARDO: That is an employer that engages
10 solely longshoremen to work on the piers.

11 MR. LINDEN: Is Mr. Gucciardo confusing the word
12 longshoremen with the International Longshoremen's Association?

13 Is that what he is trying to distinguish?

14 JUDGE GERAGHTY: Mr. Linden, let me be clear.

15 I want to be sure that I understand the purpose and
16 direction of your question.

17 You are trying to establish that ITO is an employer
18 as defined in the Act?

19 MR. GUCCIARDO: That is correct.

20 JUDGE GERAGHTY: Don't you think you have already
21 done that?

22 MR. LINDEN: We have already agreed to that.

23 JUDGE GERAGHTY: It was conceded.

24 MR. GUCCIARDO: Only because I anticipate a possible
25 appeal in this case, do I have to go a little bit further,
Your Honor.

1
2 MR. LINDEN: We make the concession.

3 JUDGE GERAGHTY: Without the concession, even, it
4 was my understanding as to jurisdiction.

5 So, if you are going to concede that he was an
6 employer as defined by the Act --

7 MR. LINDEN: ITO is an employer generally as defined
8 by the Act, but it does not apply to whether the longshoreman
9 workers has jurisdiction over this accident.

10 JUDGE GERAGHTY: Your association goes to employer
11 and not employee.

12 MR. GUCCIARDO: I will direct my question to the
13 employee phase of it.

14 BY MR. GUCCIARDO:

15 Q Mr. Cash, are you familiar with the operations of
16 terminal labor and gangs on board vessels and on the pier?
17 What they are supposed to do?

18 A Generally, yes, sir.

19 Q Is it not true that a checker or any terminal
20 laborer is assigned by the foreman at the beginning of the
21 day as to the particular job he may do?

22 A Within the class as broken down, yes, sir.

23 Q Is it not true that he may be assigned to check a
24 vessel and the cargo on board a vessel, and work on board a
25 vessel on a particular day?

MR. LINDEN: Agreed.

1
2 MR. GUCCIARDO: Your Honor, I would rather have this
3 type of answer directly from the witness.

4 JUDGE GERAGHTY: Go ahead and answer the question if
5 you can answer it, Mr. Cash.

6 THE WITNESS: Now, the way I will answer the ques-
7 tion, just as you asked it, sir, the answer would be no, sir.

8 BY MR. GUCCIARDO:

9 Q Are you telling us by that answer, then, that a
10 checker cannot be assigned to a vessel for the purposes of
11 checking cargo on that vessel?

12 A No, sir.

13 I am not answering it that way, sir.

14 Q Well, would you answer it that way now.

15 I am asking the question directly.

16 Can a checker receive an assignment in the morning
17 by the foreman on the job or the block boss to go on board a
18 vessel for the purposes of checking cargo on that vessel?

19 MR. LINDEN: I object.

20 It is immaterial to this case.

21 They were not loading or unloading or having any-
22 thing to do with vessels at this pier.

23 JUDGE GERAGHTY: I would agree that the witness did
24 not testify to anything along those lines on his direct
25 examination.

I am allowing you great leeway in that, but your

1
2 client has testified to that and it has not been contradicted.

3 You have already gotten it from your own witness.

4 Let us pass on to another area because I don't think
5 this is really relevant and material at this point in time.

6 It is not an issue as I see it.

7 BY MR. GUCCIARDO:

8 Q Mr. Cash, at the 21st Street facility, do you also
9 load and unload vessels?

10 A Yes, sir, we do.

11 Q Do you also load and unload lighters?

12 A Yes, sir.

13 Q Is it the job of the terminal labor to load and
14 unload lighters?

15 A We don't refer to it as terminal labor.

16 Extra labor, they will call it.

17 Q Is extra labor the same as terminal labor, whether
18 you know it as that or not?

19 A You have a box there, you may have people to
20 unload a lighter.

21 Q And apparently you are not familiar with the fact
22 that the new contract says that extra labor is more to be
23 defined as terminal labor?

24 MR. LINDEN: I object to that --

25 JUDGE GERAGHTY: Mr. Linden, I don't need your
objection.

1
2 That is an improper question.

3 BY MR. GUCCIARDO:

4 Q In the loading and unloading of lighters, are
5 checkers assigned to them?

6 MR. LINDEN: I object.

7 MR. GUCCIARDO: It goes to the general activity that
8 this man could be assigned to at a general facility.

9 MR. LINDEN: He is not testifying to that.

10 JUDGE GERAGHTY: This is cross-examination.

11 I assume what you are trying to establish is
12 maritime employment, Mr. Gucciardo?

13 MR. GUCCIARDO: That is right, Your Honor.

14 JUDGE GERAGHTY: On that basis, I will allow the
15 question.

16 THE WITNESS: Of my own personal knowledge, I have
17 actually seen a checker standing on the pier, checking the
18 drafts of cargo coming off a lighter, sir.

19 BY MR. GUCCIARDO:

20 Q Have you ever seen them physically on the lighter
21 where the lighter is being loaded?

22 A No, sir.

23 Of my own personal knowledge I have not seen a
24 checker myself, personally standing physically inside of the
25 lighter.

It is so long I don't remember when, sir.

1
2 Q How often do you go down to the pier, sir?

3 A I have had a very slack week this week.

4 Is this off the record?

5 JUDGE GERAGHTY: No, you are testifying.

6 THE WITNESS: I have had a slack week this week.

7 I was down there two days --

8 MR. GUCCIARDO: In the course of --

9 MR. LINDEN: Let him answer the question.

10 JUDGE GERAGHTY: Let him answer the question, Mr.

11 Gucciardo.

12 Don't interrupt him.

13 Mr. Cash, you have been down to the pier how often
14 this week?

15 THE WITNESS: Two days.

16 BY MR. GUCCIARDO:

17 Q The course of a month, how many times have you been
18 on the piers?

19 A It depends on what the activities are.

20 It is difficult for me to give a specific answer
21 to actual number of days or hours.

22 Q Your office is actually located at 17 Battery Place?

23 A Yes.

24 Q Is that where you spend most of your time?

25 A No, sir.

On the piers and at the other ports in my general

1
2 duties.

3 Q When these vans are stripped for American Export
4 Lines, are the truckmen sometimes located right on the pier,
5 and taken away directly?

6 A I do not know, sir.

7 Q Can they be?

8 A Can they?

9 Q Yes.

10 A Oh, it is possible, sir.

11 Q Could you tell us from the time that a container is
12 offloaded from a vessel, how long it usually takes until the
13 consignee actually takes physical delivery of the merchandise
14 at the pier facility?

15 A I could not give an answer to that at all, sir.

16 It may vary. It would be strictly hypothetical, sir.

17 It takes a long time.

18 Sometimes a reasonably short time.

19 Q Do you know what demurrage is?

20 A Yes, sir. I am aware of what it is.

21 Q Does demurrage apply to all consignees?

22 A As far as ITO, yes, sir, it does.

23 Q Does that mean that they have a limited number of
24 days in which to pick up their cargo?

25 A Yes, sir.

And then they are charged demurrage.

1
2 Q What is demurrage, for the record?

3 A Demurrage is a fine for allowing the cargo to remain
4 on the pier or it is an assessment or a charge for utilizing
5 pier facilities for storage beyond the free time.

6 Q In other words, it is not the purpose of ITO to
7 store the goods for the consignee on that pier?

8 They want to get the stuff in and out so that they
9 have the pier facilities free for this cargo constantly coming
10 in or constantly going out, is that true?

11 MR. LINDEN: I object.

12 Unless he means that is the only purpose.

13 JUDGE GERAGHTY: Gentlemen, I am really inquiring
14 as to what is the relevancy of the questions with reference to
15 demurrage, Mr. Gucciardo.

16 Why are you asking them?

17 MR. GUCCIARDO: To show that this, demurrage, is a
18 charge used in maritime activities, Your Honor, only.

19 JUDGE GERAGHTY: How will this tell me whether or
20 not Mr. Blundo is an employee under the Act?

21 MR. GUCCIARDO: Well, just to show that it is in
22 maritime activity that demurrage is charged.

23 Otherwise, it is a storage charge. He has already
24 testified it is in the form of a penalty, because they don't
25 store cargo there.

They have to get rid of it.

1
2 MR. LINDEN: He used the word "penalty, charge,
3 storage," he used all of those words.

4 JUDGE GERAGHTY: I don't believe that this is
5 really relevant to a determination as to Mr. Blundo's status
6 at the time that he sustained his injury.

7 So please go on to another area, Mr. Gucciardo.

8 BY MR. GUCCIARDO:

9 Q There is no question, is there, Mr. Cash, that the
10 ITO operates I believe it is three piers at what is known as
11 pier 21st Street, Brooklyn, New York.

12 A Three piers in Brooklyn, New York?

13 Q At what is known as pier 21st Street, in Brooklyn,
14 New York, are there three finger piers at that location or
15 two?

16 A If you can clarify, sir, for my edification, what is
17 a finger pier, sir?

18 JUDGE GERAGHTY: Mr. Gucciardo, again, why are we
19 going into the number of piers now?

20 MR. GUCCIARDO: I want to show Your Honor that while
21 they may be engaged in stuffing or stripping a container at
22 one part of the pier, that they may be unloading a vessel at
23 a different part of the pier.

24 JUDGE GERAGHTY: What is that going to prove?

25 MR. GUCCIARDO: To show that it is maritime employ-
ment, generally.

1 JUDGE GERAGHTY: With respect to Mr. Blundo?

2 MR. GUCCIARDO: Yes, sir.

3 JUDGE GERAGHTY: I don't see it that way.

4 I don't believe it is relevant and material.

5 I think we are just cluttering the record at this
6 point.

7
8 MR. GUCCIARDO: I want to proffer, Your Honor, this
9 evidence that Mr. Blundo could be finished stripping or check-
10 ing a stripped container and then could be assigned to check-
11 ing cargo directly coming from a vessel at that facility.

12 JUDGE GERAGHTY: Mr. Gucciardo, that is already in
13 the record about three times.

14 Your statement will stand in the record as a proffer
15 and be accepted as that.

16 I will not allow you to explore it on questioning.

17 MR. GUCCIARDO: I have nothing further, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. LINDEN:

20 Q There is a difference between cargo that must be put
21 in a bonded warehouse and cargo that is kept in custody until
22 Customs clears it?

23 A That would have to be cargo that is directed to be
24 held and duties paid to the Customs for clearance will be held
25 in bonded or custody there.

But in all cases, import cargo would have to be

1
2 cleared through the Customs, anyway, sir.

3 MR. LINDEN: That is all.

4 JUDGE GERAGHTY: Mr. Cash, let me ask you this one
5 question.

6 Apparently, at least at the time of this accident,
7 Mr. Blundo's, possibly not now, ITO could load or strip con-
8 tainers for several companies other than ITO under contract
9 with them such as American Export, am I correct?

10 The container that was being worked on belonged not
11 to ITO, in other words?

12 THE WITNESS: No, sir, it did not.

13 JUDGE GERAGHTY: It belonged to someone else?

14 THE WITNESS: Yes.

15 JUDGE GERAGHTY: And ITO was acting either to strip
16 or to load containers for someone other than ITO?

17 THE WITNESS: Other than ITO, yes, sir.

18 JUDGE GERAGHTY: Now, the people that would put the
19 cargo into a container, for example, will they be ITO employees
20 or the owner of the container?

21 That is, American Export employees or ITO employees?

22 THE WITNESS: Well, sir, if I may.

23 If we receive a container and we are going to strip
24 it, the container, for another company, well whoever put that
25 cargo into that container, I wouldn't know, sir.

It could be done by anyone.

1
2 JUDGE GERAGHTY: But any cargo that would come into
3 the 21st Street pier to be stripped, whose employees would do
4 the stripping?

5 THE WITNESS: On 21st Street, those would be a team
6 that would be assigned by ITO to strip cargo from a container
7 that has been delivered to a pier and it came from American
8 Export operation, wherever it might have been.

9 JUDGE GERAGHTY: Or anyone else that you had
10 contracts?

11 THE WITNESS: Yes, sir.

12 JUDGE GERAGHTY: But the employees doing the strip-
13 ping would be ITO employees?

14 THE WITNESS: ITO employees but doing the actual
15 physical work.

16 JUDGE GERAGHTY: I mean the labor itself.

17 THE WITNESS: Yes, sir.

18 JUDGE GERAGHTY: Thank you, Mr. Cash.

19 You are excused.

20 You may step down, sir.

21 Mr. Linden, do you have any other witnesses?

22 MR. LINDEN: No, Your Honor, I do not.

23 MR. GUCCIARDO: I want to rebut but perhaps counsel
24 will agree if this is in the record or Your Honor will agree
25 that this is in the record; that the claimant did testify that
this was a bonded warehouse.

1
2 If there is any question about that, I will put him
3 back on the stand.

4 JUDGE GERAGHTY: I am aware of what he testified to,
5 that is why I queried you before because there was no testimony
6 contradicting it.

7 If that is all, is that what you are going to ask?

8 MR. GUCCIARDO: Yes.

9 JUDGE GERAGHTY: You have a right for rebuttal.

10 Mr. Blundo, you are still under oath, sir.

11 Just be seated.

12 Whereupon,

13 CARMELO BLUNDO

14 was called as a witness for rebuttal examination and testified
15 as follows:

16 REBUTTAL EXAMINATION

17 BY MR. GUCCIARDO:

18 Q Mr. Blundo, do you of your own knowledge know whether
19 or not ITO maintains a bonded warehouse at the 21st Street
20 pier facility in Brooklyn where you worked?

21 A At that time, yes.

22 Q How do you know this, sir?

23 A Because it was a Custom shack right inside the
24 warehouse.

25 It had separate guards and everything.

Q The Custom shack, what do you mean by that, what

1
2 do you mean by that?

3 A A Customs room was right inside there. Inside the
4 warehouse.

5 Q Who were the men that were in the Customs shack, as
6 you put it?

7 A Customs.

8 Q Working for the United States Customs Service?

9 A Right.

10 Q Did you know Mr. Cash who testified here this
11 afternoon?

12 A No, I didn't.

13 Q Have you ever seen him down at that pier?

14 A No, I have never seen him.

15 Q How many years did you say you worked there?

16 A Five years.

17 Q Did he ever talk to you personally about this
18 accident?

19 A Nope.

20 Q Does ITO at that particular facility, pier 21st
21 Street, load and unload vessels?

22 A Yes.

23 Q Have you worked for ITO loading and unloading as a
24 checker, that is?

25 MR. LINDEN: I object.

This has all been covered on direct examination.

1
2 BY MR. GUCCIARDO:

3 Q At that facility?

4 A Not at that facility.

5 JUDGE GERAGHTY: This is rebuttal, Mr. Gucciardo.
6 You are going to have to rebut only what Mr. Cash
7 testified to and that has not been testified by Mr. Cash.

8 BY MR. GUCCIARDO:

9 Q Do you, at that facility, load and unload lighters?

10 A Sometimes.

11 Q When you load and unload a lighter, are you physical-
12 ly located on the lighter or not?

13 A Sometimes.

14 MR. LINDEN: I object.

15 He was not near a lighter during the course of his
16 activities at the time he was hurt.

17 JUDGE GERAGHTY: Mr. Gucciardo, on rebuttal, I would
18 take it that you would direct your rebuttal to rebutting Mr.
19 Cash's direct testimony.

20 MR. GUCCIARDO: All right.

21 BY MR. GUCCIARDO:

22 Q At the time that you were injured, the merchandise
23 that you were directly involved with, where was it being --
24 what was being done with it?

25 MR. LINDEN: He testified to that.

JUDGE GERAGHTY: Mr. Gucciardo, this is rebuttal.

1
2 Mr. Cash did not testify to that.

3 Mr. Blundo did.

4 So there is no purpose in asking him that again.

5 MR. GUCCIARDO: I have nothing further.

6 BY MR. LINDEN:

7 Q What is a bonded warehouse?

8 A A bonded warehouse is where you store cargo coming
9 out of a container.

10 Q Is it all cargo that is moved from a container,
11 cargo that must be --

12 A Well, it is just --

13 Q Mr. Blundo, please --

14 JUDGE GERAGHTY: Let Mr. Linden finish the question
15 first.

16 BY MR. LINDEN:

17 Q Is all cargo that comes out, that comes in from
18 overseas, cargo that has to be put in a bonded warehouse?

19 A No.

20 Q What does the word bonded mean?

21 A Where cargo is insured.

22 Q Insured?

23 A By either the United States government -- in other
24 words, it is a warehouse where security is even more.

25 Q Did you say the United States government insures it?

A No, I didn't say the United States government.

1
2 It is in the custody of the U. S. Customs.

3 Q Is there something different by being in custody of
4 government and bonded?

5 A This is specifically for U. S. Customs.

6 Q Would you tell me whether there is a difference in
7 cargo kept by Customs as contrasted by cargo for which there
8 must be some sort of a bond, do you know?

9 A There is, because you see, it is a separate operation,
10 has its own guards, in other words, it has its own men and
11 nobody can enter or leave there without permission of the
12 Customs.

13 JUDGE GERAGHTY: Mr. Linden, I am not going to let
14 you go any further with this.

15 The witness, I think, is trying to explain what he
16 means by bonded as much as he possibly --

17 MR. LINDEN: That is the purpose of my question.

18 He doesn't know.

19 Then I have no more questions.

20 JUDGE GERAGHTY: Yes, Mr. Linden.

21 I saw where you were going.

22 Mr. Blundo, thank you, sir.

23 You may be seated.

24 MR. LINDEN: May I say it is immaterial anyway.

25 But I thought I had to cover it in order to protect
the record.

1 JUDGE GERAGHTY: Yes, I didn't mean that.

2 It is just the fact that we are dealing with
3 terminology, specifically, which again involves at least
4 collaterally definitions which may better be found in Black's
5 than somewhere else, rather than Mr. Blundo's understanding.
6

7 Does either side have any further evidence?

8 MR. GUCCIARDO: No, Your Honor.

9 MR. LINDEN: No.

10 JUDGE GERAGHTY: Gentlemen, we are at the point,
11 then, where you may make closing argument or submit on the
12 record.

13 I might indicate there is some possibility I will
14 not be with the agency January or much beyond January. I
15 am hopeful, at least, of that possibility, not to reflect
16 adversely on the agency that I am with, just that there may
17 be.

18 I am telling you so that you have a time frame
19 reference.

20 I am prepared to rule orally on this matter if you
21 gentlemen wish to make oral argument.

22 MR. GUCCIARDO: I will make a brief oral argument
23 and I would go along with you.

24 JUDGE GERAGHTY: I will not preclude you.

25 I will come back and write the decision no matter
where.

1
2 MR. LINDEN: Mine won't be so brief.

3 JUDGE GERAGHTY: Off the record.

4 (Discussion off the record.)

5 JUDGE GERAGHTY: Back on the record.

6 Gentlemen, I take it there is no further evidence?

7 MR. LINDEN: That is right, sir.

8 JUDGE GERAGHTY: And there is no closing argument?

9 You are going to submit written briefs.

10 I will set the briefs as 10 January and there will
11 be no continuation of time granted other than for the most
12 dire exceptions.

13 It is going to be the old saw that you are excused
14 from the exam c. if you are turned in on a stretcher.

15 Gentle , the record will only be adjourned, and
16 Mr. Gucciardo, you will also, if you are claiming fees, follow
17 the usual procedure with respect to submitting them.

18 Thank you very much.

19 The record is adjourned.

20 (Whereupon, at 11:28 o'clock, a. m., the hearing
21 was adjourned, with the above noted stipulation.)
22
23
24
25

Un The

United States Court of Appeals

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

In The Matter of

The Claim for Compensation under the Longshoremen's and Harbor
Worker's Compensation Act made by Carlo Blundo
Claimant-Respondent

against

International Terminal Operating Company Inc.,
Self-Insured Employed & Petitioner

and

Director Office of Workmen's Compensation Programs
United States Department of Labor

Respondent

State of New York, County of New York, ss.:

Raymond J. Braddick, , being duly sworn deposes and says that he is
agent for Linden & Gallagher the attorney

for the above named Self-Insured Employer-Petitioner herein. That he is over
21 years of age, is not a party to the action and resides at
Levittown, New York

That on the 31st day of March , 1976, he served the within
Brief and Appendix

upon the attorneys for the parties and at the addresses as specified below

William J. Kilberg
Attorney for Workmens Compensation Programs Respondent
Solicitor of Labor
200 Constitution Avenue N.W.
Suite N 2716
Washington D.C.

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directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 31st

day of March , 1976

Roland W. Johnson
ROLAND W. JOHNSON,

Notary Public, State of New York

No. 4509705

Qualified in Delaware County

Commission Expires March 30, 1977

Raymond J. Braddick



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is

hereby admitted this 31 day

of

March

197

Maria Leuchter for Sydney Adler

Attorney for